From:	Candeub, Adam
To:	Sherk, James B. EOP/WHO; Davis, May M. EOP/WHO; DeBacker, Devin A. EOP/WHO
Cc:	Willard, Lauren (OAG); Barnett, Gary (OAG); Grieco, Christopher (ODAG); Simington, Nathan; Roddy, Carolyn
Subject:	DELIBERATIVE/DRAFT
Date:	Monday, July 13, 2020 6:07:15 PM
Attachments:	Draft Regs and Outline for NTIA Petition_7.13 5pm.docx Draft Regs and Outline for NTIA Petition_7.13 5pm_CLEAN.docx

---

Dear James, May, and Devin,

As promised, here are the draft regs as well as an outline showing where they would fit into the petition. Thank you for your patience.

Please let me know how you wish to proceed. Looking forward to working with you all, Best, Adam

Adam Candeub
Deputy Assistant Secretary
National Telecommunications and Information Administration

12 Pages (2 Records)
Withheld in their Entirety
Pursuant to
FOIA Exemption 5
(5 U.S.C. § 552 (b)(5))

From:	Candeub, Adam
To:	Willard, Lauren (OAG); Grieco, Christopher (ODAG)
Cc:	Roddy, Carolyn; Simington, Nathan
Subject:	reg draft
Date:	Wednesday, July 1, 2020 11:21:38 AM
Attachments:	NTIA External Draft 1.0 -- Potential 47 CFR Chapter I Subchapter E.docx

DRAFT: DELIBERATIVE

Hi Lauren and Christopher, As promised. Looking forward to discussing, Best, Adam

P.S. I'd also like to introduce Nathan Simington and Carolyn Roddy. They're new senior advisors in the Office of the Assistant Secretary and were instrumental in drafting these regs—and getting the final version of the petition to you.

Adam Candeub
Deputy Assistant Secretary
National Telecommunications and Information Administration

4 Pages (1 Record)
Withheld in their Entirety
Pursuant to FOIA Exemption 5
(5 U.S.C. § 552 (b)(5))

From:	Candeub, Adam
To:	Sherk, James B. EOP/WHO; Willard, Lauren (OAG); Grieco, Christopher (ODAG)
Cc:	Davis, May M. EOP/WHO; DeBacker, Devin A. EOP/WHO; Colwell, Robin C. EOP/WHO; Kratsios, Michael J. EOP/OSTP; Simington, Nathan
Subject:	EO social media petition
Date:	Friday, July 24, 2020 4:59:30 PM
Attachments:	Social Media Petition -- NTIA to Blair 7-24-20.docx

Dear All,

I wanted to give you all a heads-up on the process and the draft. (b) (5) [redacted]

(b) (5) [redacted]

Perhaps it might be good to talk to handle any last-minute concerns. Please let me know. If there's interest, I'll set a meeting up.

Thanks again for everyone's help!

Best, Adam

56 Pages (1 Record)
Withheld in their Entirety
Pursuant to FOIA Exemption
5
(5 U.S.C. § 552 (b)(5))

From: Candeub, Adam
To: Willard, Lauren (OAG)
Cc: Simington, Nathan
Subject: RE: timing
Date: Thursday, July 23, 2020 9:51:07 PM

Yeah. The substantive points perhaps we should discuss—although I concede I'm flagging a bit so maybe email is better. (b) (5) Here are my responses:

(b) (5)

(b) (5)

(b) (5) Happy to revise.

Are you OK with this?

Referral to DOJ

Referral to DOJ

[redacted]

From: Candeub, Adam <acandeub@ntia.gov>
Sent: Thursday, July 23, 2020 9:04 PM
To: Willard, Lauren (OAG) <lwillard@jmd.usdoj.gov>
Cc: Simington, Nathan <nsimington@ntia.gov>
Subject: RE: timing

OK. We'll try to get you something b/f we send to Wilbur; otherwise, you'll get what we sent to him and then we can take it from there. Does that work?

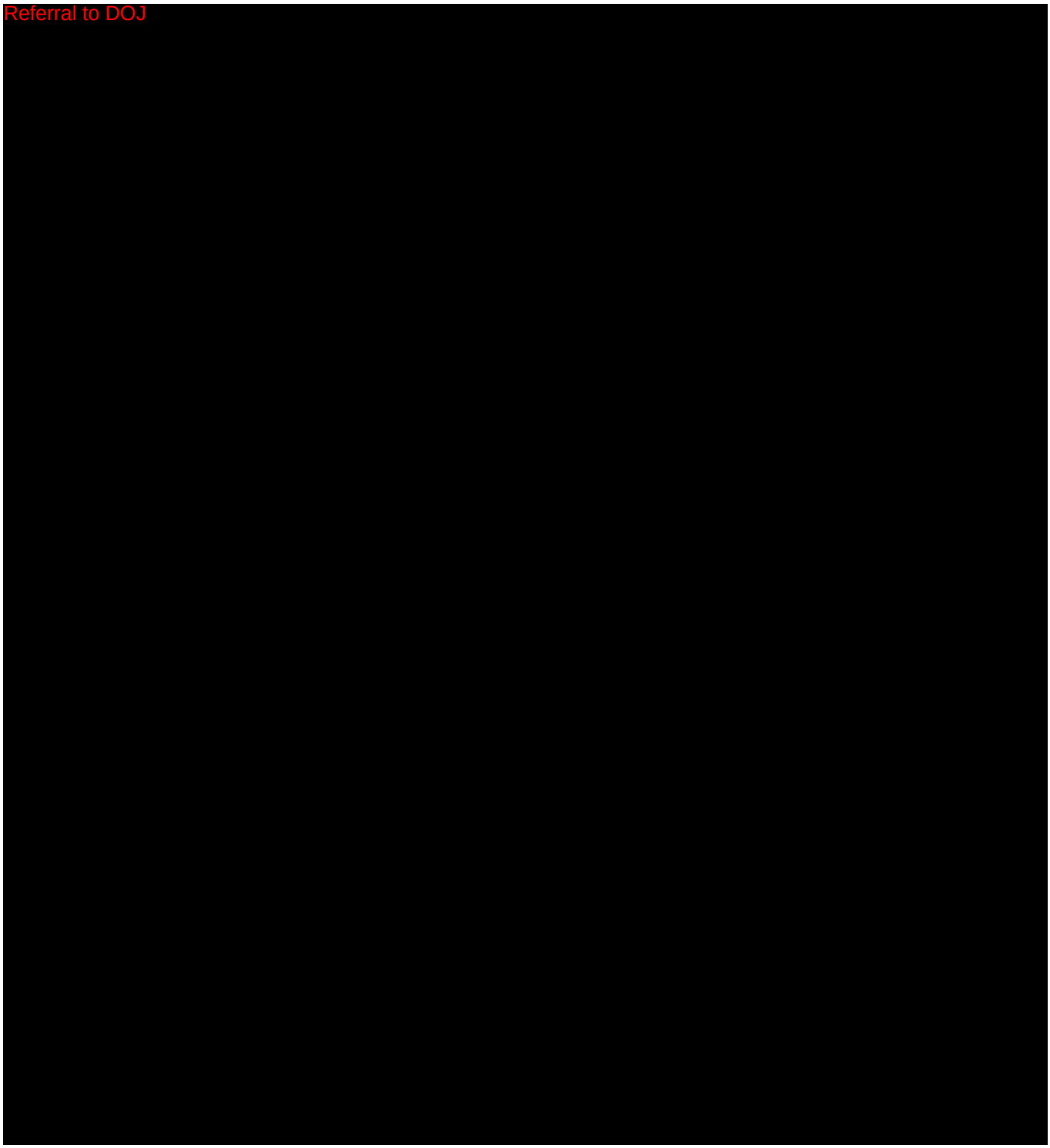
Referral to DOJ

[redacted]

From: Candeub, Adam <acandeub@ntia.gov>
Sent: Thursday, July 23, 2020 9:00 PM
To: Willard, Lauren (OAG) <lwillard@jmd.usdoj.gov>
Cc: Simington, Nathan <nsimington@ntia.gov>

Subject: RE: timing

Thanks, Lauren! I think that's OK. We can work off what you sent us this evening—and then incorporate the second batch when they come. Don't bother incorporating into one draft. We can do the first batch tonight—and should have time to turn to the second batch tomorrow morning. Would that work?



From: Candeub, Adam <acandeub@ntia.gov>
Sent: Thursday, July 23, 2020 7:54 PM
To: Willard, Lauren (OAG) <lwillard@jmd.usdoj.gov>
Cc: Simington, Nathan <nsimington@ntia.gov>
Subject: RE: timing

Thank you, Lauren. That's great. We'lll be able to incorporate most of them this evening—and then turn around polished draft in the morning b/f noon. I think that should work. Thanks, Adam

---

From: Candeub, Adam
To: Willard, Lauren (OAG); Grieco, Christopher (ODAG)
Cc: Simington, Nathan
Subject: deliberative/draft
Date: Friday, July 10, 2020 12:24:55 PM
Attachments: AC_NS Cmts 7-10 to Outline for NTIA Petition DRAFT 07.09_AC.docx

---

DRAFT/DELIBERATIVE

Dear Lauren and Christopher, Here are Nathan's and my comments. (b) (5) [redacted]. They are provided in the spirit of continuing discussion, for we are very happy with the approach you have taken and think it works very well.

As soon as you can, please let us know best next steps, i.e., next draft and WH. Have a great weekend, Adam

(b) (5) [redacted]

Adam Candeub
Deputy Assistant Secretary
National Telecommunications and Information Administration

7 Pages (1 Record)
Withheld in their Entirety
Pursuant to FOIA Exemption
5
(5 U.S.C. § 552 (b)(5))

From:	Candeub, Adam
To:	Willard, Lauren (OAG); Grieco, Christopher (ODAG); Barnett, Gary (OAG)
Cc:	Simington, Nathan; Roddy, Carolyn
Subject:	RE: deliberative/draft
Date:	Thursday, July 16, 2020 10:17:27 PM
Attachments:	social media_information service_Title I_ac.docx

Deliberative Process

Hi All, In preparation for tomorrow's meeting, here's a brief 2 page set of discussion points. I hope it will be useful/save time. Thanks, Adam

2 Pages (1 Record)
Withheld in their Entirety
Pursuant to FOIA Exemption 5
(5 U.S.C. § 552 (b)(5))

From: Candeub, Adam
To: "Willard, Lauren (OAG)"; Grieco, Christopher (ODAG); Barnett, Gary (OAG)
Cc: Simington, Nathan
Subject: RE: deliberative/draft
Date: Monday, July 13, 2020 4:03:30 PM
Attachments: DOJ regs_NTIA comments.docx

For today's discussion . . . .comments on the regs you shared. Thanks again! AC

Referral to DOJ

[redacted]

From: Candeub, Adam <acandeub@ntia.gov>
Sent: Monday, July 13, 2020 1:52 PM
To: Willard, Lauren (OAG) <lwillard@jmd.usdoj.gov>; Grieco, Christopher (ODAG) <cgrieco@jmd.usdoj.gov>
Cc: Simington, Nathan <nsimington@ntia.gov>
Subject: Re: deliberative/draft

Will do

Get Outlook for iOS

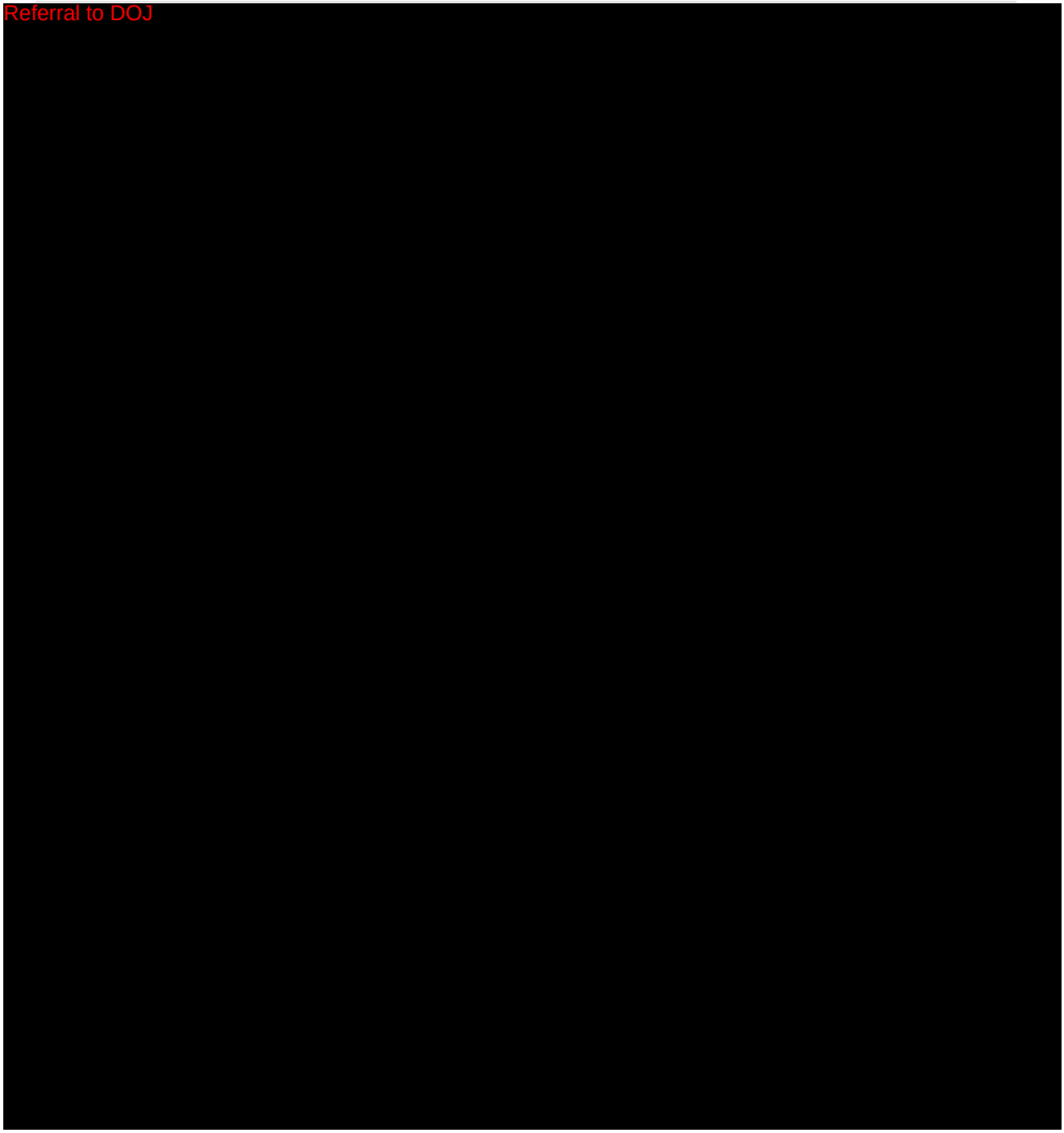
Referral to DOJ

[redacted]

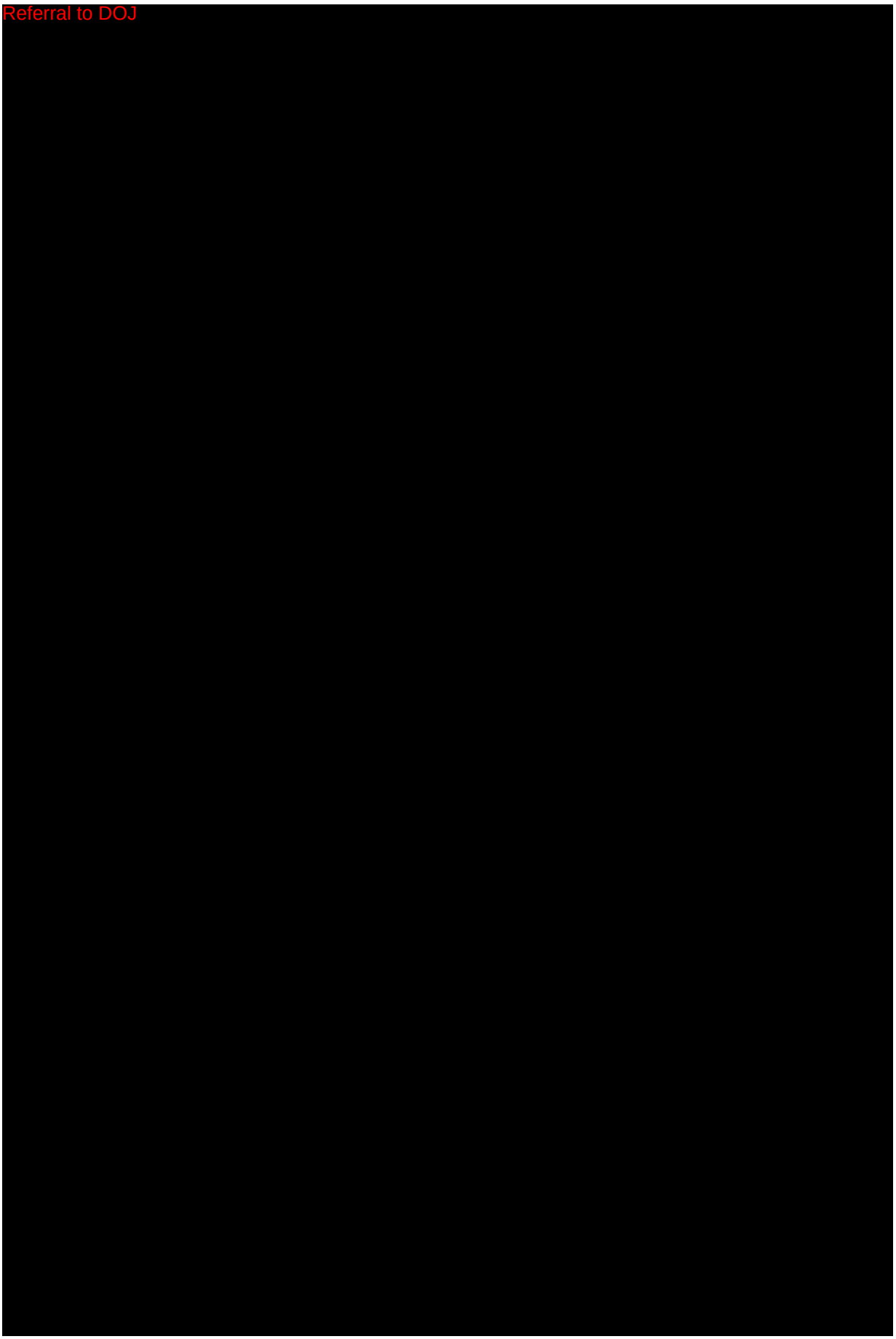
From: Candeub, Adam <acandeub@ntia.gov>
Sent: Monday, July 13, 2020 1:37 PM
To: Willard, Lauren (OAG) <lwillard@jmd.usdoj.gov>; Grieco, Christopher (ODAG) <cgrieco@jmd.usdoj.gov>
Cc: Simington, Nathan <nsimington@ntia.gov>
Subject: RE: deliberative/draft

This is helpful. Thanks so much!

Referral to DOJ



Referral to DOJ



Referral to DOJ

[redacted]

Referral to DOJ

[redacted]

Referral to DOJ

[redacted]

From: Candeub, Adam <acandeub@ntia.gov>
Sent: Monday, July 13, 2020 1:27 PM
To: Willard, Lauren (OAG) <lwillard@jmd.usdoj.gov>; Grieco, Christopher (ODAG) <cgrieco@jmd.usdoj.gov>
Cc: Simington, Nathan <nsimington@ntia.gov>
Subject: RE: deliberative/draft

Hey, Lauren—as my previous message indicates, I'm feeling heavy breathing down my sherk collar. Any help you can offer today would be greatly appreciated!

From: Candeub, Adam <acandeub@ntia.gov>
Sent: Friday, July 10, 2020 5:12 PM
To: Willard, Lauren (OAG) <Lauren.Willard2@usdoj.gov>; Grieco, Christopher (ODAG) <Christopher.Grieco@usdoj.gov>
Cc: Simington, Nathan <nsimington@ntia.gov>
Subject: Re: deliberative/draft

No worries! Sounds like a plan. Looking forward to catching up on Monday, best, Adam

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Referral to DOJ

[redacted]

From: Candeub, Adam <acandeub@ntia.gov>
Sent: Friday, July 10, 2020 12:25 PM
To: Willard, Lauren (OAG) <lwillard@jmd.usdoj.gov>; Grieco, Christopher (ODAG) <cgrieco@jmd.usdoj.gov>
Cc: Simington, Nathan <nsimington@ntia.gov>
Subject: deliberative/draft

DRAFT/DELIBERATIVE
Dear Lauren and Christopher, Here are Nathan's and my comments. (b) (5) [redacted] They are provided in the spirit of continuing discussion, for we are very happy with the approach you have taken and think it works very well.
As soon as you can, please let us know best next steps, i.e., next draft and WH. Have a great weekend, Adam
(b) (5) [redacted]

Adam Candeub
Deputy Assistant Secretary
National Telecommunications and Information Administration

6 Pages (1 Record)
Withheld in their Entirety
Pursuant to FOIA Exemption 5
(5 U.S.C. § 552 (b)(5))

From: Candeub, Adam
To: Grieco, Christopher (ODAG); Willard, Lauren (OAG)
Cc: Barnett, Gary (OAG); Simington, Nathan; Roddy, Carolyn
Subject: RE: Update Reg Draft
Date: Tuesday, July 21, 2020 5:25:30 PM
Attachments: Proposed_Regs_Draft_7_21.docx

Here you go. Thank you, Nathan and Carolyn for a quick delivery!

Referral to DOJ

[redacted]

Referral to DOJ

[redacted]

Referral to DOJ

[redacted]

From: Candeub, Adam <acandeub@ntia.gov>
Sent: Tuesday, July 21, 2020 4:14 PM
To: Grieco, Christopher (ODAG) <cgrieco@jmd.usdoj.gov>
Cc: Willard, Lauren (OAG) <lwillard@jmd.usdoj.gov>; Barnett, Gary (OAG) <gabarnett@jmd.usdoj.gov>
Subject: Re: Update Reg Draft

Ok. We will send over what we have

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4 Pages (1 Record)
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Pursuant to FOIA Exemption 5
(5 U.S.C. § 552 (b)(5))

From: Candeub, Adam
To: Burris, Meghan (Federal)
Cc: Yusko, Stephen F.; Simington, Nathan; Lilly, Zachary
Subject: RE: wsj editorial re: social media
Date: Thursday, August 13, 2020 5:24:02 PM
Attachments: AC 8-13-20 WSJ piece.docx

Hi All, Here's the op-ed that Nathan Simington and I prepared. Let me know what you need re: next steps. Happy as well for any feedback. Thanks so much, Adam

---

On Aug 5, 2020, at 9:12 AM, Candeub, Adam <acandeub@ntia.gov> wrote:

> Dear Meghan, I have a question re: Commerce policy/procedures re: op-eds. I have written several for the WSJ (as an academic) and know Taranto. And Nick Simington also has connections with the editorial page. We're gotten some inquiries re: op-ed on NTIA social media petition. Would it be consistent with Commerce protocol to write such a thing? If so, what would be the protocol? Would SWR write it? Would that be possible? I just don't know.
>
> Thanks for any guidance—and, I totally understand if the answer is "We don't do op-eds" Best, Adam
>
> Adam Candeub
> Deputy Assistant Secretary
> National Telecommunications and Information Administration

2 Pages (1 Record)
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Pursuant to FOIA Exemption 5
(5 U.S.C. § 552 (b)(5))

From: Candeub, Adam
To: Burris, Meghan (Federal)
Cc: Yusko, Stephen F.; Simington, Nathan; Lilly, Zachary
Subject: RE: wsj editorial re: social media
Date: Monday, August 17, 2020 3:25:31 PM
Attachments: AC 8-13-20 WSJ piece.docx

Dear Meghan,

Here's that op-ed re: section 230 we discussed. I also have 2 outstanding speaking invites (Federalists and Fed. Comm. Law Bar). If you have a moment, it would be great to have some guidance re: media and section 230 over the next month or so. Thanks so much! Adam

Adam Candeub
Acting Assistant Secretary
National Telecommunications and Information Administration

From: Candeub, Adam
Sent: Thursday, August 13, 2020 5:24 PM
To: Burris, Meghan (Federal) <MBurris@doc.gov>
Cc: Yusko, Stephen F. <SYusko@ntia.gov>; Simington, Nathan <nsimington@ntia.gov>; Lilly, Zachary <zlilly@ntia.gov>
Subject: RE: wsj editorial re: social media

Hi All, Here's the op-ed that Nathan Simington and I prepared. Let me know what you need re: next steps. Happy as well for any feedback. Thanks so much, Adam

Referral to DOC

[redacted]

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Thanks for any guidance—and, I totally understand if the answer is “We don’t do op-eds” Best, Adam

Adam Candeub
Deputy Assistant Secretary
National Telecommunications and Information Administration

2 Pages (1 Record)
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Pursuant to FOIA Exemption 5
(5 U.S.C. § 552 (b)(5))

From: Candeub, Adam
To: Yusko, Stephen F.; Lilly, Zachary
Cc: Simington, Nathan
Subject: FW: wsj editorial re: social media
Date: Sunday, August 16, 2020 2:45:21 PM
Attachments: AC 8-13-20 WSJ piece.docx

Hi Stephen and Zach, I'm just curious about likely next steps/ timing. Is it all up to Meghan? Any insights appreciated, AC

From: Candeub, Adam
Sent: Thursday, August 13, 2020 5:24 PM
To: Burris, Meghan (Federal) <MBurris@doc.gov>
Cc: Yusko, Stephen F. <SYusko@ntia.gov>; Simington, Nathan <nsimington@ntia.gov>; Lilly, Zachary <zlilly@ntia.gov>
Subject: RE: wsj editorial re: social media

Hi All, Here's the op-ed that Nathan Simington and I prepared. Let me know what you need re: next steps. Happy as well for any feedback. Thanks so much, Adam

On Aug 5, 2020, at 9:12 AM, Candeub, Adam <acandeub@ntia.gov> wrote:

> Dear Meghan, I have a question re: Commerce policy/procedures re: op-eds. I have written several for the WSJ (as an academic) and know Taranto. And Nick Simington also has connections with the editorial page. We're gotten some inquiries re: op-ed on NTIA social media petition. Would it be consistent with Commerce protocol to write such a thing? If so, what would be the protocol? Would SWR write it? Would that be possible? I just don't know.
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> Adam Candeub
> Deputy Assistant Secretary
> National Telecommunications and Information Administration

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Entirety
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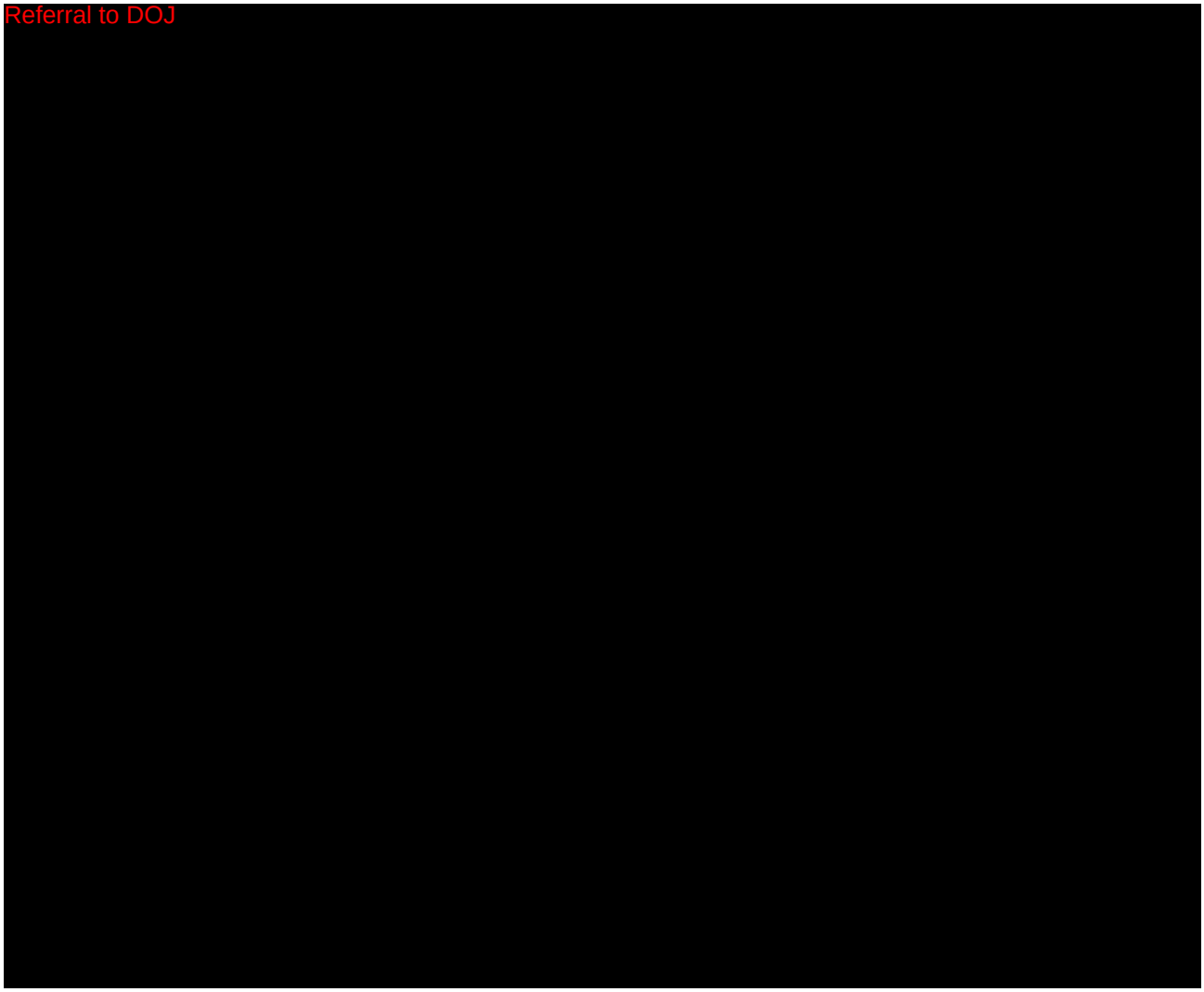
Exemption
5
(5 U.S.C. § 552 (b)(5))

From: Candeub, Adam
To: Willard, Lauren (OAG)
Subject: FW: reg draft
Date: Thursday, July 9, 2020 4:30:12 PM
Attachments: Outline for NTIA Petition DRAFT 07.08.2020 10pm.docx

Lauren, Thanks for the discussion/ meeting. I thought it was very productive and look forward to finishing up our project. I just have one question. You mentioned that you guys had prepared a draft. I checked my email and I only received this outline. Is there more? Or would you like up to meld this outline into our current draft. Let me know! Adam

Referral to DOJ



From: Candeub, Adam <acandeub@ntia.gov>
Sent: Wednesday, July 1, 2020 11:22 AM
To: Willard, Lauren (OAG) <lwillard@jmd.usdoj.gov>; Grieco, Christopher (ODAG) <cgrieco@jmd.usdoj.gov>
Cc: Roddy, Carolyn <croddy@ntia.gov>; Simington, Nathan <nsimington@ntia.gov>
Subject: reg draft

DRAFT: DELIBERATIVE

Hi Lauren and Christopher, As promised. Looking forward to discussing, Best, Adam

P.S. I'd also like to introduce Nathan Simington and Carolyn Roddy. They're new senior advisors in the Office of the Assistant Secretary and were instrumental in drafting these regs—and getting the final version of the petition to you.

Adam Candeub
Deputy Assistant Secretary
National Telecommunications and Information Administration

6 Pages (1 Record)
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5
(5 U.S.C. § 552 (b)(5))

From:	Davis, May M. EOP/WHO
To:	Candeub, Adam; Sherk, James B. EOP/WHO; DeBacker, Devin A. EOP/WHO; Colwell, Robin C. EOP/WHO
Subject:	RE: social media petition
Date:	Monday, June 22, 2020 3:44:42 PM
Attachments:	version2.1_6_19_AC smd.docx

(b) (5) I don't really know what is contemplated by coordinating with DOJ, except that they should view the language whenever it's drafted.

May Davis
(b) (6)

From: Candeub, Adam <acandeub@ntia.gov>
Sent: Friday, June 19, 2020 6:29 PM
To: Davis, May M. EOP/WHO (b) (6); Sherk, James B. EOP/WHO (b) (6); DeBacker, Devin A. EOP/WHO (b) (6); Colwell, Robin C. EOP/WHO (b) (6)
Subject: RE: social media petition

Hi All,

Thanks for the initial feedback on the petition draft that James provided. I think James mentioned that May would not have a chance to look at it the draft until the weekend—so here is a second version reflecting James's comments—(b) (5). Please let me know if you have any questions or concerns.

(b) (5) I spoke with Lauren W and Chris G @ DOJ, (b) (5). They said they would reach out to you, but I don't know the status of that.

Please let me know if I can assist your efforts in any other way. Have a good weekend, Adam

---

From: Candeub, Adam
Sent: Tuesday, June 16, 2020 9:24 PM
To: May.Davis(b) (6); James.B.Sherk(b) (6); Devin.A.DeBacker(b) (6); Colwell, Robin C. EOP/WHO (b) (6)
Cc: RBlair@doc.gov
Subject: social media petition

Hi all! I promised this COB Tuesday, and I suppose this is a generous COB. Please get back to me with comments, suggestions, general reactions--all of which will interest me greatly.

I'm afraid that what Dr. Johnson said of Paradise Lost probably applies to this draft—"Few would

wish it longer.”

Look forward to working with you on this, Adam

Adam Candeub
Deputy Assistant Secretary
National Telecommunications and Information Administration

46 Pages (1 Record)
Withheld in their Entirety
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5
(5 U.S.C. § 552 (b)(5))

From:	Candeub, Adam
To:	May.Davis (b) (6) James.B.Sherk (b) (6) Devin.A.DeBacke (b) (6) Colwell, Robin C. EOP/WHO
Cc:	RBlair@doc.gov
Subject:	social media petition
Date:	Tuesday, June 16, 2020 9:23:51 PM
Attachments:	NTIA_To_WH_Social_Media_6.16.docx

Hi all! I promised this COB Tuesday, and I suppose this is a generous COB. Please get back to me with comments, suggestions, general reactions--all of which will interest me greatly.

I'm afraid that what Dr. Johnson said of Paradise Lost probably applies to this draft—"Few would wish it longer."

Look forward to working with you on this, Adam

Adam Candeub
Deputy Assistant Secretary
National Telecommunications and Information Administration

45 Pages (1 Record) Withheld in their Entirety Pursuant to FOIA Exemption 5 (5 U.S.C. § 552 (b)(5))

From: Candeub, Adam
To: May.Davis(b) (6) James.B.Sherk(b) (6) Devin.A.DeBacke(b) (6) Colwell, Robin C. EOP/WHO
Subject: RE: social media petition
Date: Friday, June 19, 2020 6:28:28 PM
Attachments: version2.1_6_19_AC.docx

Hi All,

Thanks for the initial feedback on the petition draft that James provided. I think James mentioned that May would not have a chance to look at it the draft until the weekend—so here is a second version reflecting James's comments—(b) (5). Please let me know if you have any questions or concerns.

(b) (5) I spoke with Lauren W and Chris G @ DOJ, (b) (5). They said they would reach out to you, but I don't know the status of that.

Please let me know if I can assist your efforts in any other way. Have a good weekend, Adam

---

From: Candeub, Adam
Sent: Tuesday, June 16, 2020 9:24 PM
To: May.Davis(b) (6) James.B.Sherk(b) (6) Devin.A.DeBacker(b) (6) Colwell, Robin C. EOP/WHO(b) (6)
Cc: RBlair@doc.gov
Subject: social media petition

Hi all! I promised this COB Tuesday, and I suppose this is a generous COB. Please get back to me with comments, suggestions, general reactions--all of which will interest me greatly.

I'm afraid that what Dr. Johnson said of Paradise Lost probably applies to this draft—"Few would wish it longer."

Look forward to working with you on this, Adam

Adam Candeub
Deputy Assistant Secretary
National Telecommunications and Information Administration

46 Pages (1 Record)
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Pursuant to FOIA Exemption 5
(5 U.S.C. § 552 (b)(5))

From: Candeub, Adam
To: Simington, Nathan; Roddy, Carolyn
Subject: FW: social media petition
Date: Monday, June 22, 2020 4:03:50 PM
Attachments: version2.1_6_19_AC smd.docx

I think this is good news ☺ Again, everything in strictest confidence. That this is even at WH should be kept amongst us.

From: Davis, May M. EOP/WHO (b) (6)
Sent: Monday, June 22, 2020 3:44 PM
To: Candeub, Adam <acandeub@ntia.gov>; Sherk, James B. EOP/WHO (b) (6); DeBacker, Devin A. EOP/WHO (b) (6); Colwell, Robin C. EOP/WHO (b) (6)
Subject: RE: social media petition

I very much like this draft, and agree we should have actual regulatory language. I don't really know what is contemplated by coordinating with DOJ, except that they should view the language whenever it's drafted.

May Davis
(b) (6)

From: Candeub, Adam <acandeub@ntia.gov>
Sent: Friday, June 19, 2020 6:29 PM
To: Davis, May M. EOP/WHO (b) (6); Sherk, James B. EOP/WHO (b) (6); DeBacker, Devin A. EOP/WHO (b) (6); Colwell, Robin C. EOP/WHO (b) (6)
Subject: RE: social media petition

Hi All,

Thanks for the initial feedback on the petition draft that James provided. I think James mentioned that May would not have a chance to look at it the draft until the weekend—so here is a second version reflecting James's comments—particularly beefing up the good faith portion. Please let me know if you have any questions or concerns.

Also, James asked for actual regulatory language to include with the petition. As I understand, DOJ is releasing publically its suggested statutory revisions to section 230 shortly. After our discussion, James thought we should coordinate with DOJ so that the 2 versions (suggested regulatory and suggested statutory) track. I spoke with Lauren W and Chris G @ DOJ, and the concurred. They said they would reach out to you, but I don't know the status of that.

Please let me know if I can assist your efforts in any other way. Have a good weekend, Adam

---

From: Candeub, Adam

Sent: Tuesday, June 16, 2020 9:24 PM
To: (b) (6) ; (b) (6) ; (b) (6) ;
Colwell, Robin C. EOP/WHO (b) (6)
Cc: (b) (6)
Subject: social media petition

Hi all! I promised this COB Tuesday, and I suppose this is a generous COB. Please get back to me with comments, suggestions, general reactions--all of which will interest me greatly.

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Look forward to working with you on this, Adam

Adam Candeub
Deputy Assistant Secretary
National Telecommunications and Information Administration

46 Pages (1 Record)
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Pursuant to FOIA Exemption
5
(5 U.S.C. § 552 (b)(5))

From: Candeub, Adam
To: Robin Colwell (EOP/NEC) (b) (6)
Subject: Fwd: social media petition
Date: Tuesday, July 7, 2020 10:47:21 AM
Attachments: version2.1_6_19_AC smd.docx

Robin, I enjoyed talking, as always. Thank you very much for the improved insight into this process. It is much appreciated.

I'm sending you the draft petition to get it at the top of your inbox. (b) (5) I think they are very defensible from a policy and legal perspective, and I would be delighted to discuss.

Get Outlook for iOS

From: Davis, May M. EOP/WHO (b) (6)
Sent: Monday, June 22, 2020 3:44 PM
To: Candeub, Adam; Sherk, James B. EOP/WHO; DeBacker, Devin A. EOP/WHO; Colwell, Robin C. EOP/WHO
Subject: RE: social media petition

I very much like this draft, and agree we should have actual regulatory language. I don't really know what is contemplated by coordinating with DOJ, except that they should view the language whenever it's drafted.

May Davis
(b) (6)

From: Candeub, Adam <acandeub@ntia.gov>
Sent: Friday, June 19, 2020 6:29 PM
To: Davis, May M. EOP/WHO (b) (6); Sherk, James B. EOP/WHO (b) (6); DeBacker, Devin A. EOP/WHO (b) (6) >; Colwell, Robin C. EOP/WHO (b) (6)
Subject: RE: social media petition

Hi All,

Thanks for the initial feedback on the petition draft that James provided. I think James mentioned that May would not have a chance to look at it the draft until the weekend—so here is a second version reflecting James's comments—(b) (5) Please let me know if you have any questions or concerns.

(b) (5) I spoke with Lauren W and Chris G @ DOJ, and the concurred. They said

they would reach out to you, but I don't know the status of that.

Please let me know if I can assist your efforts in any other way. Have a good weekend, Adam

---

From: Candeub, Adam
Sent: Tuesday, June 16, 2020 9:24 PM
To: May.Davis(b) (6) James.B.Sherk(b) (6) Devin.A.DeBacker(b) (6)
Colwell, Robin C. EOP/WHO(b) (6)
Cc: RBlair@doc.gov
Subject: social media petition

Hi all! I promised this COB Tuesday, and I suppose this is a generous COB. Please get back to me with comments, suggestions, general reactions--all of which will interest me greatly.

I'm afraid that what Dr. Johnson said of Paradise Lost probably applies to this draft—"Few would wish it longer."

Look forward to working with you on this, Adam

Adam Candeub
Deputy Assistant Secretary
National Telecommunications and Information Administration

46 Pages (1 Record)
Withheld in their Entirety
Pursuant to FOIA Exemption 5
(5 U.S.C. § 552 (b)(5))

From: Candeub, Adam
To: Willard, Lauren (OAG); Grieco, Christopher (ODAG)
Subject: FW: social media petition
Date: Tuesday, June 23, 2020 10:36:57 AM
Attachments: version2.1_6_19_AC smd.docx

Hi Lauren, I just got clearance from Rob B here at Commerce to share this draft. (b) (5) [redacted]

(b) (5) [redacted] I'd be grateful for any help in that area.

(b) (5) [redacted] I would truly value a critical read of the petition—as you guys are probably the most knowledgeable 230 people around.

Let me know next steps. Thanks so much!

Adam

46 Pages (1 Record)
Withheld in their Entirety
Pursuant to FOIA Exemption 5
(5 U.S.C. § 552 (b)(5))

From: Candeub, Adam
To: Willard, Lauren (OAG)
Subject: Revised_Outline.docx
Date: Saturday, July 18, 2020 8:45:37 PM
Attachments: Revised_Outline.docx

Hi Lauren, I'm not quite readY to share even a rough version of our draft, but I did want to share the revised outline. It's attached. Its differences respond largely to the requirements for these petitions set forth below. Let me know if this seems OK to you. Thanks, Adam

(b) (5)

Adam Candeub
Deputy Assistant Secretary
National Telecommunications and Information Administration

6 Pages (1 Record)
Withheld in their Entirety
Pursuant to FOIA Exemption 5
(5 U.S.C. § 552 (b)(5))

From: Candeub, Adam
To: Simington, Nathan; Roddy, Carolyn
Subject: draft--some afternoon stuff
Date: Tuesday, June 16, 2020 2:21:07 PM
Attachments: Version3_6.16 (002).docx

Dear All, Here's the most recent draft. I just realized that I forgot to write a section. It won't take me long . . .. but while I'm writing, could you . . . .

1. Carolyn: Take another look. (I'll bring in a draft)
2. Nate, I am giving you the draft now. If you could put your changed in (sorry—I'm making you work twice, I know, but it's a casualty of rushing) and take another look at the FNs. I think it's silly to be consistent in a first draft on shortened forms—just make sure everything looks OK.
3. (b) (5) [redacted]

   OK? Questions?

Adam Candeub
Deputy Assistant Secretary
National Telecommunications and Information Administration

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From:	Candeub, Adam
To:	Roddy, Carolyn
Subject:	RE: draft--some afternoon stuff
Date:	Friday, July 17, 2020 2:48:57 PM
Attachments:	NTIA_To_WH_Social_Media_6.16.docx image001.png

Sorry. The perils of multitasking.

From: Roddy, Carolyn <croddy@ntia.gov>
Sent: Friday, July 17, 2020 2:44 PM
To: Candeub, Adam <acandeub@ntia.gov>
Subject: FW: draft--some afternoon stuff

Adam, this is the latest draft of the Petition---from June 16 at 2:21 pm. Is there a later version. If so, please send.

Thanks.

Carolyn Tatum Roddy
National Telecommmunications & Information Administration
United States Department of Commerce
1401 Constitution Avenue, NW, Room 4899
Washington, DC 20230
Office 202-482-3480 | (b) (6) [redacted]

From: Candeub, Adam <acandeub@ntia.gov>
Sent: Tuesday, June 16, 2020 2:21 PM
To: Simington, Nathan <nsimington@ntia.gov>; Roddy, Carolyn <croddy@ntia.gov>
Subject: draft--some afternoon stuff

Dear All, Here's the most recent draft. I just realized that I forgot to write a section. It won't take me long . . .. but while I'm writing, could you . . . .

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looks OK.

3. (b) (5) [redacted]

OK? Questions?

Adam Candeub
Deputy Assistant Secretary
National Telecommunications and Information Administration

45 Pages (1 Record)
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From:	Candeub, Adam
To:	candeub.adam(b) (6)
Subject:	FW: draft--some afternoon stuff
Date:	Friday, July 17, 2020 5:47:34 PM
Attachments:	NTIA_To_WH_Social_Media_6.16.docx image001.png

From: Candeub, Adam
Sent: Friday, July 17, 2020 2:49 PM
To: Roddy, Carolyn <croddy@ntia.gov>
Subject: RE: draft--some afternoon stuff

Sorry. The perils of multitasking.

From: Roddy, Carolyn <croddy@ntia.gov>
Sent: Friday, July 17, 2020 2:44 PM
To: Candeub, Adam <acandeub@ntia.gov>
Subject: FW: draft--some afternoon stuff

Adam, this is the latest draft of the Petition---from June 16 at 2:21 pm. Is there a later version. If so, please send.

Thanks.

Carolyn Tatum Roddy
National Telecommmunications & Information Administration
United States Department of Commerce
1401 Constitution Avenue, NW, Room 4899
Washington, DC 20230
Office 202-482-3480 | (b) (6)

From: Candeub, Adam <acandeub@ntia.gov>
Sent: Tuesday, June 16, 2020 2:21 PM
To: Simington, Nathan <nsimington@ntia.gov>; Roddy, Carolyn <croddy@ntia.gov>
Subject: draft--some afternoon stuff

Dear All, Here's the most recent draft. I just realized that I forgot to write a section. It won't take me long . . .. but while I'm writing, could you . . . .

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2. Nate, I am giving you the draft now. If you could put your changed in (sorry—I'm making you work twice, I know, but it's a casualty of rushing) and take another look at the FNs. I think it's silly to be consistent in a first draft on shortened forms—just make sure everything looks OK.
3. (b) (5) [redacted]

   OK? Questions?

Adam Candeub
Deputy Assistant Secretary
National Telecommunications and Information Administration

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(5 U.S.C. § 552 (b)(5))

From: Candeub, Adam
To: Simington, Nathan; Roddy, Carolyn
Subject: intro
Date: Friday, September 11, 2020 10:19:00 AM
Attachments: Reply_Introduction.docx

Adam Candeub
Acting Assistant Secretary
National Telecommunications and Information Administration
(202) 360-5586

2 Pages (1 Record)
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(5 U.S.C. § 552 (b)(5))

From:	Candeub, Adam
To:	Adam Candeub
Subject:	FW: Comments with links and first 5 comments
Date:	Friday, September 11, 2020 7:18:19 PM
Attachments:	image001.png SUMMARY OF MAJOR ARGUMENTS--First 5 9.11.20.docx Significant Opposing Comments.docx

---

From: Roddy, Carolyn <croddy@ntia.gov>
Sent: Friday, September 11, 2020 6:57 PM
To: Candeub, Adam <acandeub@ntia.gov>
Subject: Comments with links and first 5 comments

Attached are two documents: summaries of the 5 comments completed thus far and the list of the significant opposing comments with links.

I will work on others other the weekend.

Feel free to contact me by my cell any time this weekend.

Carolyn Tatum Roddy
National Telecommmunications & Information Administration
United States Department of Commerce
1401 Constitution Avenue, NW, Room 4899
Washington, DC 20230
Office 202-482-3480 | (b) (6) [redacted]

From: Candeub, Adam <acandeub@ntia.gov>
Sent: Friday, September 11, 2020 10:19 AM
To: Simington, Nathan <nsimington@ntia.gov>; Roddy, Carolyn <croddy@ntia.gov>

Subject: intro

Adam Candeub
Acting Assistant Secretary
National Telecommunications and Information Administration
(202) 360-5586

11 Pages (2 Records)
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(5 U.S.C. § 552 (b)(5))

From:	Candeub, Adam
To:	Blair, Robert (Federal)
Cc:	Boney, Virginia (Federal); Kinkoph, Douglas; Smith, Kathy
Subject:	coordination issues for EO finalization
Date:	Wednesday, July 22, 2020 3:02:59 PM
Attachments:	Decision_Memo_Secr._Ross_Social_Media_petition.docx

Hi Rob and Virginia, There are some issues that have to be resolved re: getting the petition out the door—which are present as door date is Monday 6/27.

Finalizing issues

1. I am more confident that WH and DOJ will be done by Monday, but DOJ indicated that it felt it would likely have "little changes during the day [Monday]."
2. ERGO, I cannot have a final version until Monday.
3. BUT, I'd like to get the decision memo process going. The attached describes the memo's main points, with a promise the final version will be provided as soon as possible. Could we use that?
4. The EO explicitly says the Secretary, not NTIA, should file the petition. I think that there is a good argument that, therefore, the Secretary should clear the final product—thus issue (3) creates some problems.

Proposed solutions

1. Tell DOJ/WH they can't edit during the weekend or on Monday. (They will not like that. And I won't like telling them that ☺--and they probably won't listen to me anyway)
2. Prepare the latest draft for Secretary Ross for his approval and ask that he state that he approves authority delegation to NTIA for conforming, clarifying changes in consultation with WH counsel/DOJ.
3. Arrange for Secretary Ross to review on Monday

Signature issue

Whose name goes on the signature block? Kathy Smith, as NTIA GC, will file it under her signature, but it may look odd if no one signs the petition. Should Secretary Ross's name go as the EO directs him to file? I would be delighted to sign, but that may not be ideal for reasons I'd be happy to discuss. Given the scrutiny the EO may receive, I would like to be precise on this.

Please advise. If we go the decision memo route, please put me in touch with OGC and the folks up there so I can get that process going.

Thanks so much,

Adam

Adam Candeub
Deputy Assistant Secretary
National Telecommunications and Information Administration

3 Pages (1 Record)
Withheld in their Entirety
Pursuant to FOIA Exemption
5
(5 U.S.C. § 552 (b)(5))

From: Candeub, Adam
To: LaBruna, Anthony (Federal)
Subject: FW: coordination issues for EO finalization
Date: Thursday, July 23, 2020 10:41:47 AM
Attachments: Decision_Memo_Secr._Ross_Social_Media_petition.docx

---

Anthony, Let me know if you have any questions! Happy to come to your office and explain, Best, AC

From: Candeub, Adam
Sent: Wednesday, July 22, 2020 3:03 PM
To: Blair, Robert (Federal) <RBlair@doc.gov>
Cc: Boney, Virginia (Federal) <VBoney@doc.gov>; Kinkoph, Douglas <DKinkoph@ntia.gov>; Smith, Kathy <KSmith@ntia.gov>
Subject: coordination issues for EO finalization

Hi Rob and Virginia, There are some issues that have to be resolved re: getting the petition out the door—which are present as door date is Monday 6/27.

Finalizing issues

(b) (5) [redacted]

Proposed solutions

(b) (5) [redacted]

Please advise. If we go the (b) (5) [redacted], please put me in touch with OGC and the folks up there so I can get that process going.

Thanks so much,

Adam

Adam Candeub
Deputy Assistant Secretary
National Telecommunications and Information Administration

3 Pages (1 Record)
Withheld in their Entirety
Pursuant to FOIA Exemption
5
(5 U.S.C. § 552 (b)(5))

From: Roddy, Carolyn
To: Candeub, Adam; Simington, Nathan
Subject: FW: Communications Daily for September 4, 2020
Date: Friday, September 4, 2020 12:55:49 PM
Attachments: cd-2020-09-04.pdf
image001.png

Flagging article re 230 on pages 6-7. Headlines 4 AGs and ends with 2 academics. Expected list of opponents also mentioned.

Carolyn Tatum Roddy
National Telecommmunications & Information Administration
United States Department of Commerce
1401 Constitution Avenue, NW, Room 4899
Washington, DC 20230
Office 202-482-3480 | (b) (6) [redacted]

From: CommunicationsDaily@warren-news.com <CommunicationsDaily@warren-news.com>
Sent: Thursday, September 3, 2020 7:26 PM
To: CommunicationsDaily@warren-news.com
Subject: Communications Daily for September 4, 2020

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September 4, 2020 ***Vol. 40, No. 173***

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Personal Executive Summary

Today's Top News

Verizon May Turn Table on T-Mobile on Spectrum Screen

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C-Band Earth Stations Try Again to Get on Incumbents List

Broadcasters and cable operators whose C-band earth station antennas aren't on the FCC's incumbents list petitioned to rethink that. We're told the commission indicated it might provide more relief after it added some earth station operators to an updated...**Read More >>**

NATOA Wants More Broadband, Less Preemption in 2021

COVID-19 required local governments step up to expand internet access and broadcast critical information, NATOA President Brian Roberts and General Counsel Nancy Werner told us. NATOA hopes "to spend less time responding to FCC preemptive orders" next year, and...**Read More >>**

GOP State AGs Ask FCC to Adopt NTIA CDA Section 230 Petition

Adopt NTIA's petition for rulemaking on Communications Decency Act Section 230, Republican state attorneys general commented to the FCC posted Thursday in RM-11862 (see 2009020064). Tech, telecom and consumer groups again largely said the FCC shouldn't consider...**Read More >>**

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Communications is playing a bigger role for electric utilities as they move to a smarter grid, Vivian Bouet, chief information officer at San Antonio's CPS Energy, told the Utilities Technology Council virtual conference on its final day Thursday. UTC...**Read More >>**

Industry Needs to Think of Devices as ‘Connected Platform,’ LG CTO Tells IFA

The COVID-19 pandemic brought "so many people into the online economy, from shopping to working to learning," creating industry opportunities to innovate for the new shelter-in-place reality, I.P. Park, LG Electronics president-chief technology officer, told an IFA 2020 news...**Read More >>**

Qualcomm Aiming to Scale 5G Smartphones to 'Global Mass-Market Audience'

The 2021 introduction of 5G functionality in Qualcomm's 4 Series of Snapdragon processors will speed the mass scaling of entry-level 5G smartphones globally, said Qualcomm President Cristiano Amon in an opening IFA 2020 keynote Thursday. Amon spoke via prerecorded...**Read More >>**

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FRIDAY, SEPTEMBER 4, 2020 VOL. 40, NO. 173

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Top News

Coming C-Band Auction

Verizon May Turn Table on T-Mobile on Spectrum Screen

Verizon appears to be girding for a fight with T-Mobile over whether its spectrum holdings should preclude the "uncarrier" from bidding in the C-band auction, which starts Dec. 8, industry officials said. Verizon would flip the script on T-Mobile, which lobbied against Verizon and AT&T holdings seeking preferential treatment for competitors in the TV incentive auction (see 1408130047).

T-Mobile recently added 600 MHz spectrum in a lease with Columbia Capital and picked up a dominant position in the 2.5 GHz band through its buy of Sprint. AT&T has 175 MHz and Verizon 115 MHz of sub-6 GHz spectrum, versus 324 MHz for T-Mobile (see 2006050042). That doesn't include 3.5 GHz spectrum.

"Verizon has been bragging about its millimeter spectrum holdings and 5G strategy," said T-Mobile Vice President-Government Affairs, Technology and Engineering Policy Steve Sharkey. "Any attempt to prevent T-Mobile from getting additional spectrum, including during the C-band auction, is clearly intended

to use regulation to thwart competition both in providing services and in the auction." Verizon didn't comment Thursday.

LightShed's Walter Piecyk flagged the brewing fight in note to investors earlier that day. Verizon appears to be "lining up an argument against T-Mobile being able to bid in the C-Band auction," he said. Verizon is highlighting the FCC's "long forgotten spectrum screen, arguing that T-Mobile already owned too much spectrum in a few markets," he said: "Verizon's argument would not be unwarranted. The approval of the Sprint transaction and the FCC's upcoming cleanup auction of 2.5 GHz spectrum provides T-Mobile with visibility on nearly 200 MHz of mid-band spectrum."

Any Verizon push would probably fall flat, New Street's Blair Levin told us. "As a policy matter, it seems to run counter to a general policy view that the Republicans have pushed to the effect that limits on bidders are not appropriate in terms of spectrum caps or bidder caps," he said: "As an institutional matter, I can't see the FCC wanting to disqualify a bidder who would add significant bidding tension to the auction."

Lawyers who represent carriers said Verizon is likely to raise the issue. They said the current FCC probably wouldn't pursue the spectrum screen issue. That could change with a new commission if Democratic nominee Joe Biden is elected president.

On the citizens broadband radio service auction, a Wireless ISP Association spokesperson said its members, by the group's count, won 3,308 licenses, or 16% of all licenses won, across 1,235 counties, with bids of more $93 million.

Verizon and Dish Network accounted for more than 60% of net auction proceeds, Wells Fargo's Eric Luebchow told investors. AT&T was "noticeably absent," he said: "We're not overly surprised by this, and expect them to be looking at C-band in earnest, but historically AT&T has been one to not see a spectrum band it didn't want."

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"The surprises were the absence of AT&T and the minimal winning bids from T-Mobile, whereas DISH won a near national footprint," wrote Citi's Michael Rollins. Verizon went for depth, paying 39 cents MHz/POP "to cover 46% of the U.S. population in roughly 5% of the land area," he said: Dish Network went for breadth, bidding 15 cents MHz/POP "to get near-national coverage of about 99% of the population within about 88% of the land area." Rollins questioned why Dish would spend $1 billion on spectrum given the cost of building its proposed 5G network.

Piecyk had predicted Verizon would pursue nationwide mid-band, which didn't happen. The carrier got "deep spectrum in the big markets where it needs it the most," he said: "Their goose eggs were in second-tier markets." Verizon will likely use CBRS for LTE capacity augmentation, he told investors. "This could include implementations in small cells and macro towers, but this was not a positive data point for tower companies." — ***Howard Buskirk***

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Litigation Possible?

C-Band Earth Stations Try Again to Get on Incumbents List

Broadcasters and cable operators whose C-band earth station antennas aren't on the FCC's incumbents list petitioned to rethink that. We're told the commission indicated it might provide more relief after it added some earth station operators to an updated list last month (see 2008030041). It's unclear whether the petitions for reconsideration, if denied, will be followed by a court challenge.

Lerman Senter cable lawyer Mark Palchick told us litigation is possible for earth stations that get their recon petitions rejected. But an outside counsel active in the C-band proceeding said litigation seems unlikely due to the slim likelihood of success and the costs that would be involved. The FCC didn't comment.

Massillon Cable TV's recon petition Thursday in docket 20-205 said not adding unregistered antennas to the incumbents list is the fault of the International Bureau not making clear an update of those registrations was needed, instead of burying that information in a footnote of the 147-page C-band clearing order. The Ohio MVPD said if changing C-band satellite operators' licenses isn't an unconstitutional taking because the operators are being made whole for transition costs, not compensating the earth station operators for excluded antennas is a taking. MCTV asked for a stay or waiver of the Sept. 14 lump sum election deadline pending consideration of its recon petition.

There could be other asks for a stay or waiver of the election deadline, said Lerman Senter's Jeff Carlisle, representing recon petitioner Hotwire Communications. He said given the speed at which the C-band proceeding has been moving, "it was inevitable there would be procedural glitches," which is how the petitioners see their being excluded. He said given steps the FCC has taken to maximize participation in the earth station antenna registration, it would make sense for it to grant relief to the petitioners.

Petitioners through Thursday argued the FCC, when urging registration, billed it as for interference protection purposes, and added reimbursement long after the registration window closed. Rules never before required that registrations be updated when antennas are added to maintain the interference protection for the registered site, said Sinclair licensees.

Not being on the registry could mean "serious financial ramifications," said Texas' Brazos Valley Public Broadcasting Foundation, which called its lack of updated registration "administrative oversight." It wouldn't "be able recover substantial [C-band clearing and repacking] costs such as those for retuning, repointing, and filtering its earth station." — ***Matt Daneman***

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Pandemic and PEG

NATOA Wants More Broadband, Less Preemption in 2021

COVID-19 required local governments step up to expand internet access and broadcast critical information, NATOA President Brian Roberts and General Counsel Nancy Werner told us. NATOA hopes "to spend less time responding to FCC preemptive orders" next year, and more time supporting local effort to fill gaps shown by the pandemic, Werner said during the group's virtual meeting this week.

Without a federal policy on expanding "Lifeline, E-rate and telehealth in a significant way, we've had to step in," Roberts said. Cities and counties are working with schools to expand internet access through public Wi-Fi, distributing hot spots and negotiating with cable companies for discounted service to low-income consumers, said the city/county of San Francisco policy analyst. Localities also emphasized making public health data available quickly and increasing public participation through virtual meetings, he said.

Public, educational and government channels are critical to sharing local information about the coronavirus, said Werner. The virus increased local telecom officers' workload, and many are doing jobs they never did before, she said. Preemptions don't help during a public health crisis, Werner said. NATOA and the National League of Cities spoke with the Wireless Infrastructure Association in late spring about local permitting amid the pandemic, Werner said. WIA members promised to be flexible with shot clocks, and the general counsel hadn't heard about any conflicts. Industry seemed to fear there would be problems, but "most communities were easily able to pivot."

Support for municipal broadband may be growing as the pandemic flags access problems, said Werner, predicting some states might reconsider restrictions on local governments. "Now, more than ever, everyone's starting to listen," she said. "We are having more serious conversations around how to reach people with affordable services that have been left behind thus far, and the municipal option is becoming more part of the discussion."

NATOA had a mixed 2020 on telecom policy as the FCC continued to push against local control in cable and wireless, said Werner. One win was the 9th U.S. Circuit Court of Appeals tossing FCC preemption of aesthetic review authority for small cells. The court upheld other parts of the order and municipal governments are eyeing next steps. With localities also challenging last year's cable local franchise authority order in the 6th Circuit (see 2009020052), "the jury's still out ... on a number of those preemptions," the lawyer said. Commissioner Brendan Carr, who supported preemptive actions, extended an olive branch to local governments Tuesday (see 2009010053).

San Francisco is seeing a "steady increase" but no "flood" of small-cell installations, Roberts said. Winning on aesthetics at the 9th Circuit was good, "but we're still constrained by the shot clocks," he said.

Werner didn't expect much FCC action before the election, particularly after President Donald Trump yanked Commissioner Mike O'Rielly's renomination. Trump and Democratic nominee Joe Biden both talked about infrastructure, so whoever wins, "I'm hoping that broadband becomes the focus," she said. The pandemic shows telehealth and the homework gap must be priorities, said Roberts. "Sometimes, these authority fights become a distraction."

NATOA is talking with members about diversity as many organizations reckon with social justice after the George Floyd killing, said Roberts. "We're trying to ... incorporate racial equality principles in our training and education materials for our members and the kinds of programs we put on," he said. "We're not going to go for grandiose statements. We're going to try to listen to communities of color."

Expect industry to go to the states if the FCC's small-cells order gets reversed, Best Best local telecom attorney Gail Karish warned Thursday. Local governments are weighing an appeal of the 9th Circuit upholding the FCC. Democrats in Congress have bills to overturn the FCC order, but passing such legislation wouldn't preempt more than 25 state small-cells laws, said Karish. When industry isn't successful in one tier of government, they usually try another, she said.

Don't expect many more state small-cells bills next year, since industry scored a win on federal fee caps at the 9th Circuit, said Telecom Law Firm's Tripp May. That story isn't over yet, and if the FCC ends up losing next year, there could be a "flurry" of state activity in 2022, he said.

Who controls Congress after the election will be most important for local issues, said Werner. In the panel's chat session, Best Best's Gerard Lederer said a change in FCC leadership could have big impact. Roberts agreed. "We have a good indication of how Commissioners [Jessica] Rosenworcel and [Geoffrey] Starks would approach pre-emption issues," he wrote. Michigan locality group Protec's General Counsel Mike Watza added that "big elected changes at the State level will be a big assist as well." — ***Adam Bender***

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Groups Largely Opposed

GOP State AGs Ask FCC to Adopt NTIA CDA Section 230 Petition

Adopt NTIA's petition for rulemaking on Communications Decency Act Section 230, Republican state attorneys general commented to the FCC posted Thursday in RM-11862 (see 2009020064). Tech, telecom and consumer groups again largely said the FCC shouldn't consider the petition, saying the FCC and NTIA are exceeding their jurisdiction and expertise. The AG group was formed by Texas' Ken Paxton, Indiana's Curtis Hill, Louisiana's Jeff Landy and Missouri's Eric Schmitt. The petition clarifies 230's scope and empowers states without undermining protections for moderation of "traditionally regulated content," they wrote: It promotes freedom of speech by "ensuring competition through transparency."

Granting the request would exceed FCC authority, the Computer & Communications Industry Association said: The FCC "has no role in regulating speech on the Internet, and NTIA's proposed narrowing of the phrase 'otherwise objectionable' would lead to the proliferation of objectionable content online." CCIA noted Chairman Ajit Pai spoke against allowing "intrusive government regulations" when dissenting against net neutrality rules 2015. It would be inconsistent to now argue the commission "possesses authority to enact retaliatory content policy for digital services whose competitors are a few clicks away," CCIA said.

The FCC has a tradition "of not regulating online content," said Incompas: The net neutrality order shows the preference for "light-touch regulation of internet information services," but the petition "contemplates that the FCC would regulate the online services being delivered via" broadband internet access service. Section 230 protects content moderation by individual users on platforms like Reddit, the company commented: The petition might enable frivolous lawsuits against protected moderation efforts.

Efforts to clarify or update Section 230 are warranted, but that's Congress' role, the Information Technology and Innovation Foundation said. The FCC doesn't have statutory authority here, ITIF said in support of remarks by Commissioner Geoffrey Starks: "Section 230 is best understood as it has long been understood: as an instruction to courts about when liability should not be imposed."

The petition would reduce, not promote, viewpoint diversity online, Free Press commented: The same FCC that "wrongly declared itself unable to adopt conduct rules for broadband providers under far more certain authority" can't create conduct rules for the internet "now on the basis of Section 230 authority it disavowed." Handling regulations for content moderation and liability are outside NTIA's expertise, said Consumer Reports: The agency's mission "centers upon the systems that power technology, not the creative cargo that travels on top of it." President Donald Trump is attempting to "unconstitutionally silence his critics, and the FCC should take not part," said Access Now.

NTIA proposes a new, "more arbitrary Fairness Doctrine" for the internet, something the First Amendment bars, said TechFreedom: "The constitutional basis for regulating broadcast media" doesn't apply to internet media. The petition's claim 230 "inhibits competition" is "absurd," said Engine: NTIA didn't offer any evidence that exposing startups to "unlimited legal exposure" would "enhance startup formation and competition."

Antitrust law and regulation of the digital communications sector need a "serious reboot," but the FCC shouldn't be responsible for it, Consumer Federation of America commented. CFA cited "decades of lax enforcement" that's "failed to promote competition and protect consumers." It recommended a comprehensive review and a new agency to "address the many harms" to consumers caused by "dominant players in the digital communications sector."

Two academics backed a "modest proposal to pare back Section 230 immunity." The FCC could issue an order clarifying immunity "only applies when online service providers are carrying third-party content, but does not apply when online service providers are carrying their content," said New York University associate professor Robert Seamans and Georgetown University adjunct professor Hal Singer. Section 230's original purpose isn't being served, and platforms are exploiting it to block regulation, they wrote. **— *Karl Herchenroeder***

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CBRS Future

Utility Goals for Smart Grid Depend on Better Communications

Communications is playing a bigger role for electric utilities as they move to a smarter grid, Vivian Bouet, chief information officer at San Antonio's CPS Energy, told the Utilities Technology Council virtual

conference on its final day Thursday. UTC also took a deep dive in a panel on a project by Central Virginia Electric Cooperative (CVEC) to bring fiber service to its customers.

People want clean energy, Bouet said. "That means the grid, and how we manage the grid … needs to be more intelligent," she said. "It needs to be more mobile." Utilities are "wrestling with legacy systems," she said: "How do we modernize that?"

Going digital has to be more than superficial, Bouet said. "Digital transformation is taking a step back, looking at what we do and fundamentally reimagining what that looks like." That requires getting close to customers but also a huge amount of data that needs to be secured, she said. The pandemic has driven the transformation and forced changes to occur much faster than they would have otherwise, she said. That's especially true for San Antonio, a COVID-19 hot spot, she said.

CVEC got started with a goal of meeting customer expectations "and their desire for services beyond electricity," said CEO Gary Wood. Fiber also helps the co-op track data from customers "every few minutes versus once a day or once a month," he said. CVEC offered dial-up internet from 1997 to 2008, he said: "When the internet was still first growing … we and our members were behind the curve."

CVEC explored broadband over power line, Wood said. "That turned out to work a little better in the laboratory than it did on the power lines in the field." CVEC tried to find a partner to offer broadband, agreeing to waive pole rental fees, he said: "We got no responders." Eventually, the co-op made a $127 million commitment to build a fiber network, which it hopes to do in four years, he said. COVID-19 led CVEC to speed up deployment, he said. The utility's projected take-rate was 35% and it's seeing 50-75%, he said. "We're building in areas where customers have few options."

Douglas Dowling, CommScope director-sales and business development, said rural fiber networks like the one CVEC is building are inherently different from urban networks and require a different design. Urban customers usually have two or three options for broadband, he said. CVEC has an average of eight subscribers per mile, compared with more than 200 in a city, he said. Urban take-rates are usually much lower, while rural providers can sign up as many as 75% of potential customers, he said. Rural providers also are usually more flexible and will sign up subscribers whenever they want service and tend to have more above-ground connections, he said.

Some utilities will lean on the citizens broadband radio service band, while others will rely on the 900 MHz and other bands, said Dewey Day, Pacific Gas & Electric senior telecom engineer, on another panel. Utilities, led by Southern California Edison, were among the bidders in the CBRS auction (see 2009020057).

"It's really more about the applicability of that spectrum to your geographic territory and coverage needs," Dewey said. A CBRS site covers less territory than the 900 MHz band already used by utilities, he said. "You're looking at some more sites, some more takeout points, more backhaul locations."

CBRS might prove to be "a complement" to other spectrum, said John Hughes, Ameren director IT network engineering and operations. In tests of the 3.5 GHz band, the utility found its coverage extended 17 miles "in the flat prairies of Illinois," he said. "There are going to be use cases where it's applicable. It's just a matter of economics and how many sites do you want to build."

Ameren uses 900 MHz as its "base" spectrum, Hughes said. "We think that's going to cover the majority of our fixed assets across two states and carry some of mobile needs such as push to talk," he said:

"We don't think it's the only spectrum Ameren or other utilities would be dependent on." In some pockets, Ameren will need lower latency and higher performance, he said.

Not every band "is fit for every use case," said Liana Ault, Nokia energy innovation lead. "You really are going to have to weigh and look at what challenges are you trying to resolve and will it fit the bill," she said: Utilities need to do research and RF planning "and really look and see what they're trying to accomplish." **— *Howard Buskirk***

Share Article

'Life's Good at Home'

Industry Needs to Think of Devices as 'Connected Platform,' LG CTO Tells IFA

The COVID-19 pandemic brought "so many people into the online economy, from shopping to working to learning," creating industry opportunities to innovate for the new shelter-in-place reality, I.P. Park, LG Electronics president-chief technology officer, told an IFA 2020 news conference Thursday. The conference was held before journalists assembled in person at the Messe Berlin fairgrounds. Park spoke via prerecorded holographic video and on a live videoconference feed from Seoul.

To really make good use of the online opportunity created by the pandemic, "we need to start thinking of all our devices and appliances as a connected platform, where we can create new services, solutions and also new business models," said Park. He introduced LG's ThinQ Home smart home project, describing it as centralized in a "real, brick-and-mortar four-story house" built outside Seoul to be a "testbed for LG's innovation in a real-life setting." The house was built with technology "as an integral part of the living experience," he said. ThinQ Home embodies LG's "holistic approach to intelligent living, made possible by our uniquely diverse coverage" of the business-to-business and business-to-consumer markets, he said.

Merlin Wulf, LG director-marketing, Western Europe, appeared live to welcome Park's hologram "to the stage" with "our very own take of a live press conference." Uncertainty is in the future, "more so than ever," said Park. But the pandemic affords the consumer tech industry a "real opportunity for those we serve," he said. "Lockdowns, for one, opened up a whole new potential for homes. Social distancing has pushed us to find new ways to get together."

Other than the "obvious threat of massive infection" from the coronavirus, "another great enemy during the months of lockdown was boredom," said Park. "With theaters and theme parks all shut down, there's been a much greater demand on our homes as a place of entertainment." LG has been "doubling down" on its home entertainment "offering," and OLED TVs are the "centerpiece," he said.

OLED is the "unrivaled medium of display, true to every detail," said Park. LG's introduction of a new Alpha 9 Gen 3 processor makes "our TVs even more adaptable, more faithful to a whole range of content we use TVs for," he said. The processor uses "advanced deep-learning algorithms to boost picture and sound quality," he said. Using Dolby Vision IQ and the UHD Alliance's Filmmaker Mode enables viewing of "masterpiece" movies "exactly as the maestro intended," he said.

IFA Notebook

"That we are meeting here today in Berlin gives us back at least a bit of normality—much-needed normality," IFA Executive Director Jens Heithecker told an opening news conference Thursday. "With IFA

2020 as a real live event, I see it as a big sign, a symbol, for all of us to show that we can look beyond. Beyond the pandemic, beyond the economic fallout, beyond all these uncertainties, there is a normal ahead." Heithecker said he was asked many times why IFA wasn't taken all-virtual. "It's quite simple," he said. "When it comes to doing business, nothing beats the personal connection."

TV is at the "center of the connected home," said Marek Maciejewski, TCL Europe director-product development. "For a much smoother, faster and more stable video and game streaming experience, some of our 8K products will come with 5G connections, and all 8K products will come with Wi-Fi 6," he said. "This year, we have taken the next step" in display innovation, partnering with OLED R&D company JOLED on the next generation of quantum-dot OLED TVs using inkjet-printed screens, said Maciejewski. "These screens, I would say, are the holy grail in our industry because they can deliver top-notch picture quality for premium mid-screen and large-screen TVs." **— *Paul Gluckman***

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'Tech Is Back'

Qualcomm Aiming to Scale 5G Smartphones to 'Global Mass-Market Audience'

The 2021 introduction of 5G functionality in Qualcomm's 4 Series of Snapdragon processors will speed the mass scaling of entry-level 5G smartphones globally, said Qualcomm President Cristiano Amon in an opening IFA 2020 keynote Thursday. Amon spoke via prerecorded video before a physical audience in a Messe Berlin exhibition hall. The hybrid physical/virtual IFA 2020, the first tech trade show in the COVID-19 era with in-person attendance (see 2008310024), opened with the theme "Tech is Back."

Qualcomm "delivered" on its IFA 2019 promise to bring 5G to its 6 and 7 Series processors along with its "premium tier" (see 1909060014), said Amon. By bringing 5G to the 4 Series, "we're accelerating 5G global commercialization at scale and working to ensure that the most affordable 5G devices worldwide are based on Snapdragon," he said. Qualcomm's goal is to use the 4 Series 5G "expansion" to bring high- and mid-tier features to "a global mass-market audience" numbering at least 3.5 billion smartphone users, he said. Xiaomi will be among the first OEMs to build the 4 Series into a 5G smartphone, he said.

It should be "no surprise" that 5G commercialization "is moving fast," said Amon. "Last year at IFA, I was thrilled to tell you that 20 OEMs and 20 operators had launched or were planning to launch 5G in the coming months. The reality has exceeded all expectations." Qualcomm estimates more than 80 operators in nearly 40 countries have launched 5G networks, "with over 300 more investing in the technology," he said.

Devices makers are "equally active," said Amon. "There are hundreds of products announced or in development" using Qualcomm 5G technology, he said. Qualcomm projects 750 million 5G smartphones globally will ship in 2022, he said. By 2023, 5G connections are forecast to surpass a billion, "doing so two years faster than 4G," he said. "By 2025, 5G connections are expected to reach nearly 3 billion globally, and could account for 45% of all mobile data traffic."

The deployment of 5G fixed wireless access using mmWave and sub-6 GHz to connect homes and small business offers the benefits of fiber at lower cost, said Amon. Fixed wireless access connections are

expected to carry 25% of global mobile network data traffic by the end of 2025, he said: "That's incredible growth."

With the right technology, "many workplaces can be anywhere," said Amon. "The changes we're experiencing right now will shape the future of the enterprise for decades to come in a good way. The growth in remote work can make jobs more accessible across diverse geographies and to many people."

Qualcomm is partnering with Live Nation in using 5G to "enhance live music in exciting new ways," beginning with a Snapdragon installation at the Antwerps Sportpaleis arena in Belgium, said Amon. The technology will help fans "get closer to the music they love," and give artists the augmented reality tools "to take their creativity beyond the boundaries of the physical stage," he said. "It can also allow more people to share in the live music experience and complement the physical event by virtually extending the walls of the venue." Virtual concerts are in "huge demand," said Live Nation CEO Michael Rapino last month, estimating 67 million fans globally viewed more than 18,000 virtual concerts and festivals in Q2 (see 2008060001). **— *Paul Gluckman***

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Comm Daily® Notebook

2.5 GHz Tribal Window Closes With 400-Plus Applications

The FCC 2.5 GHz tribal priority window closed Wednesday as scheduled with more than 400 applications, the agency said Thursday. It has been under pressure to extend by six months the window, which opened Feb. 3, but granted only a 30-day extension. As of July 31, the FCC said 229 applications had been submitted, with 55 more in the pipeline. "Tribes showed tremendous interest in the 2.5 GHz band over the past several months, and I am pleased by the large number of applications the Commission has received," said Chairman Ajit Pai: "We are now a step closer to enabling Tribal entities to obtain this spectrum for free and quickly put it to use to bring service to rural Tribal lands." Public Knowledge urged the FCC to open a new window. "For Tribes, closing the window before the end of the pandemic is a slap in the face that will prevent their communities from accessing the vital connections they need to engage in daily life," PK said.

Share Article

5GAA Clarifies Proposal for C-V2X; NCTA Takes Aim at Ford

The 5G Automotive Association corrected its proposed rules for cellular vehicle-to-everything in 30 MHz of the 5.9 GHz band. Among the changes, "delete in its entirety subsection (b) in 5GAA's proposed rule section 95.3167 and make any necessary conforming edits," the group said in a filing posted Thursday in docket 19-138: "This subsection is unnecessary because 5GAA proposed an on board unit transmit power limit based only on effective isotropic radiated power (EIRP) levels." NCTA, meanwhile, countered a July Ford Motor report on the threat from Wi-Fi in part of the band to intelligent transportation systems (see 2007140057). The report "does not contain any new test results or analysis of existing data," NCTA said: "Instead, the Ford Submission … repackages its previous ineffective advocacy with new mistaken assertions."

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Outages From Storms Laura, Marco Decreasing, Says DIRS

Cable and wireline subscribers without service due to tropical storms Laura and Marco has dropped from 133,195 to 124,509 in the affected portions of Louisiana and Texas, said Thursday's FCC disaster information reporting service release. Cellsites down decreased from 7.7% to 4.7%. One Louisiana public service answering point continues to reroute 911 calls, and KBCA Alexandria, Louisiana, remains down, along with 14 FM stations and two AMs—one fewer AM than Wednesday (see 2009020061).

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Coronavirus

Wireline Bureau Extends E-rate, RHC Gift Rules Waiver Through Dec. 30

The FCC Wireline Bureau said Thursday it's extending its gift rules waiver to the Rural Health Care and E-rate programs by three months, to Dec. 31. The original waiver cut-off date was Sept. 30 (see 2003180054). The Schools, Health & Libraries Broadband Coalition, Consortium for School Networking and State Educational Technology Directors Association sought an extension through June 30, citing the pandemic (see 2008050052). "We find good cause to extend" the waiver because of "the ongoing disruptions caused by COVID-19 to program participants and the continued need for robust connectivity," the bureau ordered. It waived "the RHC deadline for responding to" Universal Service Administrative Com. information requests through Dec. 31. It directed USAC "provide a 30-day extension to E-Rate program participants impacted by the pandemic that request an extension to respond to certain USAC information requests, including those related to Program Integrity Assurance (PIA) requests, issued through December 31."

Share Article

Schumer Blasts Upcoming GOP Aid Bill; McConnell Doubts Deal Prospects

Minority Leader Chuck Schumer, D-N.Y., criticized Senate GOP leaders' expected rollout next week of an approximately $500 billion COVID-19 aid bill, writing Democratic colleagues that "Republicans may call their proposal 'skinny,' but it would be more appropriate to call it 'emaciated.'" Proposals the Senate GOP floated in late July included funding to implement the Secure and Trusted Communications Networks Act (HR-4998) and some other telecom and tech provisions but no broadband money (see 2007280059). Some believe Capitol Hill's inability to agree on an additional aid bill including broadband means the issue could become a focus during fall election campaigns (see 2008210001). The expected revised GOP proposal "appears to be completely inadequate," Schumer said. "I was hopeful … we could make progress in our negotiations with the White House," which remain stalled (see 2008270051). "Republicans are trying to 'check the box' and give the appearance of action," Schumer said. "I don't know if there will be another package in the next few weeks or not," McConnell said during an event at a Kentucky hospital: Chances of bipartisan agreement have "descended" as the election approaches.

Share Article

Conn's, Stung by Pandemic, Focuses Online; Stock Down

Not all retailers got a quarterly sales assist from the pandemic, even as they shift online where shoppers are spending more money. Conn's reported sales fell 8.6% to $279.7 million from the year-ago period. Same-store sales dropped 13.2% for the quarter ended July 31. Chief Operating Officer Lee Wright on a Thursday investor call said sales could be affected through the fiscal year. CEO Norm Miller said there are opportunities geographically and with different customer segments to "take appropriate risk for the back half of the year," but the company is being "quite cautious as we go forward, with unemployment still at double digits and unknown what's going to happen, having obviously never been through a pandemic." There wasn't Q3 guidance. Shares closed down 16% to $11.52. Conn's had a deceleration after stimulus from the Coronavirus Aid, Relief and Economic Security Act waned at the end of July, said Wright. Consumer electronics sales fell 11.7%. In response to what it sees as lasting changes in buying habits, Conn's is accelerating digital investment. It launched an e-commerce platform last year and upgraded its website, resulting in 72% e-commerce growth in the quarter. Online was 2%-3% of the balance of sale in Conn's credit portfolio in Q2, up 70%. It can ultimately be 10%, said Miller. ***—RD***

Share Article

35% of US Companies Don't Know When They Will Reopen Offices

More than a third of U.S. employers don't know when they will reopen workplaces, reported the Conference Board Thursday. It canvassed 1,100 corporate leaders in 20 municipalities Aug. 19-26, finding about 60% polled their workers about comfort in returning. "Despite talk of a looming vaccine" for COVID-19, 5% of respondents said wide availability "would be a significant factor in the timing of a return." Most companies have protocols for staff arriving at work, with 67% requiring screening, testing or temperature checks.

Share Article

Resy Asks New Yorkers About Comfort Reinstating Indoor Dining

Resy canvassed New York City subscribers Thursday on their comfort level about returning to indoor dining. Gov. Andrew Cuomo (D) continues banning that in the city even as he allows it at 50% capacity in the rest of the state. The dining reservations app asked users to choose how soon they would return to indoor dining once it's reinstated—immediately, in a few weeks, a few months, or not until a vaccine is available.

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Capitol Hill

Ligado Role Doesn't Need IIG Involvement, Pai Tells House Members

Consultant Dennis Roberson's work for Ligado and his role on the FCC Technical Advisory Council isn't a conflict of interest that should be referred to the agency inspector general, Chairman Ajit Pai said in

letters to House Armed Services Committee members dated Aug. 24 and released Thursday. Pai responded to letters from Strategic Forces Subcommittee Chairman Jim Cooper, D-Tenn.; Strategic Forces ranking member Mike Turner, R-Ohio; and Intelligence, Emerging Threats and Capabilities Subcommittee ranking member Elise Stefanik, R-N.Y. Pai said allegations of a conflict of interest due to Roberson and Associates being an author of a technical study used to support the FCC's Ligado approval and also being on TAC are baseless because the council is advisory only. "I hope that unfounded allegations like those in your letter do not dissuade individuals from agreeing to participate in federal advisory committees," Pai said. He said Ligado approval used the same definition of "harmful interference" that NTIA does and incorporated FAA and Transportation Department recommendations. Roberson didn't comment Thursday but also has denied any conflict (see 2006150050).

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Carr, Latta Take COVID-19-Focused Tour of Ohio

FCC Commissioner Brendan Carr toured parts of Ohio Thursday with House Communications Subcommittee ranking member Bob Latta, a Republican from that state, Carr's office said. The visits focused on "the FCC's role in responding" to COVID-19. They included one to an ISP in Defiance "that is connecting households with K-12 and college students and building public Wi-Fi hotspots pursuant to special authority granted by the FCC," Carr's office said. He and Latta visited a behavioral health facility in the Toledo area that's using funding from the COVID-19 Telehealth Program "to treat at-risk patients remotely." They toured a Perrysburg school that's working with ISPs to "ensure that their students can participate in remote learning while classes are taught online," Carr's office said.

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Wireline

FCC Releases Guidance on Connected Care Pilot Applications

The FCC released guidance for applications to the agency's $100 million Connected Care Pilot Program, said a news release and public notice Thursday. The PN includes information on how healthcare providers can prepare for the application process and will be followed by a subsequent PN with detailed application procedures and timing for an application window, a release said. "This year, our country has pivoted to a newer model of delivering health care, one that finds connectivity at its core," said Chairman Ajit Pai. He thanked Commissioner Brendan Carr for leading here. "We worked to stand up this Pilot Program to support the delivery of care directly to patients," Carr said in a separate release, calling it "Carr's Connected Care Pilot Program." The program is open to eligible nonprofit and public healthcare providers, the PN said. To prepare to apply, providers will need an eligibility determination and healthcare provider number from Universal Service Administrative Co., the PN said. The program will use USF funds "to help defray costs of connected care services for eligible health care providers, providing universal service support for 85% of the cost of eligible services and network equipment," not including devices.

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Comments on NECA USF Formula Proposal Due Oct. 5

Comments are due Oct. 5, replies Oct. 20 on the National Exchange Carrier Association's 2021 modification of the average schedule universal service high cost loop support formula, said an FCC Wireline Bureau public notice in Thursday's *Daily Digest* on docket 05-337.

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Wireless

T-Mobile Launches Promised Education Initiative

T-Mobile launched Project 10Million, a $10.7 billion initiative that was one of the commitments the carrier made to regulators to win approval for its buy of Sprint. "Partnering with school districts across the country, the program offers free wireless hotspots, free high-speed data and access to laptops and tablets, at-cost," T-Mobile said Thursday. It aims to reach 10 million households.

Share Article

T-Mobile Adds 5G LG Velvet, at 50% Off

LG's 5G Velvet smartphone will be available on T-Mobile Sept. 10, said the carrier Thursday. The Velvet will operate on the carrier's 600 MHz and 2.5-GHz 5G bands, along with LTE. For a limited time, customers can get the $588 phone for half off, with 24 monthly bill credits, if they trade in an eligible device or add a line. T-Mobile's version of the Velvet has a MediaTek chipset.

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Internet

1/3 of Americans Worked Remotely in 2019: NTIA Survey

About one-third of U.S. employees, 51 million, worked remotely in 2019, NTIA said Thursday in initial results on internet use. The survey was done in November.

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State Telecom

DC OUC Director Defends 911 Dispatching, Transparency

The head of the Washington, D.C.'s 911 call center welcomes a possible audit by the Office of the D.C. Auditor next year, amid a growing furor over reported dispatching problems. "I know what we do in this agency," D.C. Office of Unified Communications Director Karima Holmes said Thursday on WAMU(FM) Washington's *The Kojo Nnamdi Show*. "It is not a systematic problem in D.C. 911. These things happen, but fortunately we have safety nets in place to make sure they don't." Holmes disputed 911 dispatch expert Dave Statter's reports alleging frequent mistakes that others have also glommed onto in criticizing OUC and saying its errors could cost first responders priceless time answering emergency medical and other calls for help. "Sharing snippets of radio traffic and other incomplete piecemeal records

just do not accurately convey the full picture here," said Holmes. "Dave Statter is not my oversight." The mayor, deputy mayor and city council oversee OUC and "have this information," she said. "All of that gets investigated, and we do a full investigation" that includes the 911 call and what information the caller gave, she said. "Anytime an error is made, we address it." A caller to the radio program identified as Christina said her daughter's teenage friend watched her mother die from a heart attack as D.C. 911 sent responders to the wrong address. Holmes replied it's a tragic situation, though she didn't know the specific incident. "Things are hard," she said. "People are in the middle of emergencies, and sometimes that address is wrong, and sometimes it is the call-taker" who "takes the call wrong." Statter told the radio program he wants more transparency and accountability from OUC. Holmes told the D.C. Council only four times last year when dispatchers were sent to incorrect addresses and 21 times in five years, but Statter "can show 38 bad addresses since December," he said. OUC recently responded to our Freedom of Information Act request for records on previous 911 dispatching issues (here), and Thursday we sent another FOIA request for records on three late-August incidents. OUC responded more than 24 hours later to our request for comment on our Wednesday report about those three incidents: "We caution against the use of publicly available partial records of emergency operations as they generally do not include the full emergency response and may inaccurately present critical variables such as the nature or fluidity of the emergency, the engagement between the caller and call-taker, and/or the extent or duration of the dispatch," a spokesperson emailed. ***—AB***

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FCC Addressing Puerto Rico's Concerns, Pai Tells Lawmakers

The FCC is focused on Puerto Rico's specific issues, Chairman Ajit Pai assured House Commerce Vice Chair Yvette Clarke, D-N.Y., and other lawmakers in a letter posted Thursday. The agency drew "lessons from the 2017 Hurricane Season to help inform our preparedness efforts and future incident response," he said. "The unique aspects of responding to disasters in remote areas, such as hilly, rural parts of Puerto Rico, highlighted several key areas of preparedness. Here, satellite communications and high frequency (HF) radio, such as amateur radio, take on greater significance for more isolated areas." The FCC found it must "engage actively year-round with critical infrastructure sectors and state, local, Tribal, and territorial governments to better address and position communications needs in times of disaster" and created the Hurricane Recovery Task Force, he said.

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International Telecom

Amazon Talks SpaceX Lower Orbit Concerns With FCC Aides

Though SpaceX asked to move much of its proposed mega constellation to lower orbit, it hasn't acknowledged potential solutions to the increased collision risks that would create with Amazon's Kuiper mega constellation, Amazon officials told aides to all FCC commissioners, per an ex parte post Wednesday. Even if space safety problems are addressed, potential interference issues necessitate putting SpaceX's entire modified constellation in the non-geostationary orbit fixed satellite service processing round that

launched in March, it said. Amazon petitioned to deny SpaceX's lower orbit ask (see 2007140001). SpaceX didn't comment Thursday.

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Telecom Notes

FCC Denies Waivers Seeking Delay of Uniendo Deadline

The FCC Wireline Bureau denied a request by AeroNet Wireless Broadband and Critical Hub Networks for waivers of various deadlines for the Stage 2 competitive process in the Uniendo a Puerto Rico Fund. Granting the waivers would "unnecessarily delay the selection of winners and thus the deployment of robust and resilient fixed voice and broadband services," said an order in docket 18-143, posted in Thursday's *Daily Digest*. The requested delay would, "if allowed, disrupt other prospective Stage 2 applicants hoping to participate and would negatively impact a fair and effective competitive process." The companies said two recent tropical storms and the COVID-19 pandemic prevented them from getting required letters of credit, the bureau said: They "have known for almost a full year that a letter ... would be required in order to apply for Stage 2 funding." Documents were due Thursday.

Share Article

Intellectual Property

Sonos Gets Longer Temporary Exclusion of List 4A Tariffs, Through 2020

The Office of the U.S. Trade Representative notified Sonos it got extension through Dec. 31 of the exclusion from the List 4A Section 301 tariffs on speaker imports from China, said the company in a Thursday SEC filing. The exclusion extension eliminates the 7.5% tariffs until year-end. Sonos sources the speakers under the Harmonized Tariff Schedule's 8517.62.0090 subheading for a wide swath of Bluetooth goods, one of 87 categories granted USTR extensions Aug. 31 (see 2008310033). Sonos, whose exclusion was granted in March (see 2005110034), has begun the process of seeking refunds for the $30 million in tariffs paid through July, said Chief Financial Officer Brittany last month (see 2008060030). The company is continuing plans to diversify its supply chain into Malaysia, Bagley said on the August call. Sonos turned to Malaysia to reduce exposure to the tariffs on Chinese-sourced wireless mesh networking audio components. The company planned to have "significant" U.S.-bound production from Malaysia ramped up by Dec. 31, but due to COVID-19-related government restrictions on manufacturing in Malaysia, reaching scale will take until mid-2021, Bagley said.

Share Article

Broadcast

IHeart Pushing Pai Office for Foreign Ownership Approval

The FCC should act promptly on iHeartMedia's petition to be up 100% foreign owned, said executives in a call Monday with Matthew Berry, chief of staff to Chairman Ajit Pai, per a filing in docket 20-51. A similar call Aug. 28 was between iHeart and Pai's media adviser, Alexander Sanjenis. Team Telecom—DOJ, DOD and the Department of Homeland Security—OK'd the petition in June, and similar petitions

have been approved, the radio station owner said. “Grant of the Petition would clear the way for greater investment in broadcast as radio emerges from the economic challenges posed by the COVID-19 pandemic.” The petition is intended to give flexibility to sell stock, and was endorsed by Commissioner Mike O’Rielly (see 1908120040).

Share Article

Cable

More Commenting Time Needed on Charter Conditions, Incompas Says

A 30-day comment period, not a 14-day one, is needed to get input on ramifications of the U.S. Court of Appeals for the D.C. Circuit’s ruling on conditions on Charter Communications (see 2008140040) and what it means for other conditions from the Time Warner Cable/Bright House Networks deal. That’s per Incompas in a docket 16-197 post Wednesday, as it also said there needs to be comment on Charter waiting until the reply round on the proceeding asking for a sunset of conditions to provide an economic analysis. The Free State Foundation said just because the D.C. Circuit didn’t touch the FCC’s usage-based pricing condition on Charter doesn’t mean the court backed those data caps, just that it and other plaintiffs didn’t have legal standing to challenge the data caps.

Share Article

Media Notes

Spotify Pushing Upgrades to Premium With Free Google Mini

Spotify is trying to upsell customers to its Premium service with a free Google Net Mini. Its Premium Family, Duo and Student plans have “limited eligibility.” The offer runs through Sept. 30 or while supplies last; codes expire Oct. 31.

Share Article

Satellite

Swarm Opposes Orbcomm Petition to Deny Bigger NVNG Constellation

Swarm’s planned expansion of its VHF non-voice non-geostationary mobile satellite service poses no mutual exclusivity issues, and the FCC should approve it while it resolves spectrum sharing issues raised in the NVNG FSS processing round, the company told the International Bureau this week. It urged denial of Orbcomm’s petition to deny (see 2008180001) and that Orbcomm be directed to coordinate in good faith. Orbcomm didn’t comment Thursday.

Share Article

Kepler Launches Another LEO Data Backhaul Satellite

Kepler's third low earth orbit satellite for its data backhaul service launched Thursday, the company said. The satellite also adds narrowband support for IoT applications, it said. The FCC approved U.S. market access for Kepler in 2018 (see 1811150028).

Share Article

Communications Personals

Library of Congress appoints **Deborah Thomas** to chief, Serial and Government Publications Division, where she was acting head ... Delaware Chief Information Officer **James Collins** leaves to join Microsoft Consulting as a general manager focused on state and local government and higher education; Department of Technology and Information Chief Operating Officer **Jason Clarke** named acting CIO.

Rejoining CyrusOne is **John Hatem** as executive vice president-chief operating officer, replacing **Kevin Timmons**, who leaves ... Avaya adds **Stephen Spears**, ex-SAP SuccessFactors, in newly created role of chief revenue officer ... Skyboxe 4G/5G fixed wireless access firm adds **Bill Smith**, ex-TiVo, as head-marketing ... Equifax adds **Dorian Hare** from Moody's as senior vice president-corporate investor relations, succeeding **Trevor Burns**, moving to senior financial officer, Global Consumer Solutions business.

Nexstar promotes **Mari Ossenfort** to vice president-general manager, broadcast and digital operations in Sioux Falls and Rapid City, both in South Dakota; **Jay Huizenga** retiring ... Glu Mobile hires **Jon David**, ex-Taunt CEO, as vice president-general manager ... Tanium adds **Mark Fields**, ex-Ford Motor CEO, to the board as lead independent director.

Share Article

Communications Daily will not be published Monday, September 7, in observance of the federal Labor Day holiday. Our next issue will be Tuesday, September 8.

From:	Candeub, Adam
To:	Kinkoph, Douglas
Subject:	FW: Draft press release
Date:	Thursday, July 16, 2020 9:59:26 AM
Attachments:	Draft SM Petition Press Release.docx

FYI: I'm starting Stephen & Zac on prepping for the press stuff.

From: Yusko, Stephen F. <SYusko@ntia.gov>
Sent: Thursday, July 16, 2020 9:30 AM
To: Candeub, Adam <acandeub@ntia.gov>
Cc: Lilly, Zachary <zlilly@ntia.gov>
Subject: Draft press release

Hi Adam – Here's a draft release to review. It's a little bare-bones, with space left for additional detail to be added later.

--Stephen

Draft // Pre-decisional

FOR IMMEDIATE RELEASE
Monday, July 27, 2020

News Media Contact:
Office of Public Affairs, 202-482-4883

Commerce Department Files Petition to Clarify Liability Protections for Online Platforms and Protect Against Censorship

Today, the National Telecommunications and Information Administration (NTIA) filed a petition for rulemaking with the Federal Communications Commission (FCC) on behalf of U.S. Secretary of Commerce Wilbur Ross seeking to clarify regulations related to section 230 of the Communications Decency Act.

The petition was filed in response to the May 2020 Executive Order on Preventing Online Censorship. It calls on the FCC to make clear when online platforms can claim section 230 protections if they restrict access to content in a manner not specifically outlined under the Act.

(b) (5) [redacted]

(b) (5) [redacted]

The petition also seeks further clarity from the FCC on:

- TK
- TK
- TK

(b) (5) [redacted]

From: Candeub, Adam
To: Adam Candeub
Subject: FW: Draft remarks for Federalist Society event
Date: Thursday, August 20, 2020 11:00:37 AM
Attachments: DRAFT Candeub remarks at FedSoc 230 event.docx

From: Yusko, Stephen F. <SYusko@ntia.gov>
Sent: Thursday, August 20, 2020 9:41 AM
To: Candeub, Adam <acandeub@ntia.gov>
Subject: Draft remarks for Federalist Society event

Hi Adam,

Here are the draft remarks for Monday's event as discussed. My calendar is clear today, so I'm happy to continue working on these if you have edits or suggestions for additional material. We're at about 8-9 minutes with the current length.

--Stephen

3 Pages (1 Record)
Withheld in their Entirety
Pursuant to FOIA Exemption
5
(5 U.S.C. § 552 (b)(5))

From: Candeub, Adam
To: candeub.adam(b) (6)
Subject: FW: Edits v1.0 -> v1.1 to Petition
Date: Thursday, June 11, 2020 9:53:15 AM
Attachments: [clean] v1.1 6-10-20 Petition (Nathan response draft).docx
[RL] v1.1 6-10-20 Petition (Nathan response draft).docx

From: Simington, Nathan <nsimington@ntia.gov>
Sent: Thursday, June 11, 2020 1:05 AM
To: Candeub, Adam <acandeub@ntia.gov>
Subject: Edits v1.0 -> v1.1 to Petition

Hi Adam,

Attached please find a clean and redline. Clearly there's a lot of work left to be done by both of us. I have bluebooked and cite-checked all the FN in the version you provided. I've also proofread, proposed language in a few places, and read for flow. I have not conformed terms yet because this is more of a finalization step, and I haven't had time to generally do as much with language and presentation as I'd like. (b) (5)

I have calls tomorrow from 11-12 and 2-2:30 – otherwise, I'm at your disposal, early or late, to work on this as much as needed. My proposed agenda for our first call tomorrow:

(b) (5)

Best,
Nathan

--
Nathan A. Simington, Sr. Adviser, NTIA
nsimington@ntia.gov
(b) (6)

From: Candeub, Adam <acandeub@ntia.gov>
Sent: Wednesday, June 10, 2020 12:28 PM

To: Simington, Nathan <nsimington@ntia.gov>
Subject: RE: CFR Sections for Today

U got it. Let's chat now if you have the time. (b) (6)

From: Simington, Nathan <nsimington@ntia.gov>
Sent: Wednesday, June 10, 2020 12:27 PM
To: Candeub, Adam <acandeub@ntia.gov>
Subject: CFR Sections for Today

Hi Adam,

Per our conversation yesterday, I think you wanted me to locate (b) (5) . Please let me know if you had something else in mind. Looking forward to speaking later today.

All best,
Nathan

--
Nathan A. Simington, Sr. Adviser, NTIA
nsimington@ntia.gov
(b) (6)

30 Pages (2 Records)
Withheld in their Entirety
Pursuant to FOIA Exemption
5
(5 U.S.C. § 552 (b)(5))

From: Roddy, Carolyn
To: Candeub, Adam
Cc: Simington, Nathan
Subject: FW: FCC RM 11862-- NTIA Section 230 petition
Date: Tuesday, September 1, 2020 12:38:45 PM
Attachments: Pai Statement on Section 230 Petition.pdf
Section 230 Petition PN 8-3-20.pdf
image006.png
ntia_petition_for_rulemaking_7.27.20 from FCC Data Base.pdf

Adam/Nathan,

(b) (5) [redacted] I sent the attached for distribution to her and the group.

Maybe a little too late, but always replies.

Carolyn Tatum Roddy
National Telecommmunications & Information Administration
United States Department of Commerce
1401 Constitution Avenue, NW, Room 4899
Washington, DC 20230
Office 202-482-3480 | (b) (6) [redacted]

From: Roddy, Carolyn
Sent: Tuesday, September 1, 2020 12:29 PM
To: 'MurrayAD@state.gov' <MurrayAD@state.gov>
Subject: FCC RM 11862-- NTIA Section 230 petition

Adam, thank you for distributing these materials.

Attached is the Petition filed July 27, the PN requesting public comments (791 have been filed to date) issued on August 3, and FCC Chairman Pai's Statement regarding establishing the Comment period. My calculations indicate that the filing will be due close of business tomorrow but there is

an opportunity to file a Reply 15 days after that.

(b) (5) [redacted]

Carolyn Tatum Roddy
National Telecommmunications & Information Administration
United States Department of Commerce
1401 Constitution Avenue, NW, Room 4899
Washington, DC 20230
Office 202-482-3480 | Cell: (b) (6) [redacted]

FCC NEWS from the Federal Communications Commission

Media Contact:
Will Wiquist, (202) 418-0509
will.wiquist@fcc.gov

For Immediate Release

STATEMENT OF FCC CHAIRMAN AJIT PAI ON THE DEPARTMENT OF COMMERCE'S SECTION 230 PETITION FOR RULEMAKING

WASHINGTON, August 3, 2020—This morning, Federal Communications Chairman Ajit Pai issued the following statement regarding the Petition for Rulemaking filed last week by the Department of Commerce regarding Section 230 of the Communications Decency Act of 1996:

"Today, the FCC's Consumer and Governmental Affairs Bureau will invite public input on the Petition for Rulemaking recently filed by the Department of Commerce regarding Section 230 of the Communications Decency Act of 1996. Longstanding rules require the agency to put such petitions out for public comment 'promptly,' and we will follow that requirement here. I strongly disagree with those who demand that we ignore the law and deny the public and all stakeholders the opportunity to weigh in on this important issue. We should welcome vigorous debate—not foreclose it. The American people deserve to have a say, and we will give them that chance. Their feedback over the next 45 days will help us as we carefully review this petition."

###

PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information: 202-418-0500
Internet: http://www.fcc.gov
TTY: 1-888-835-5322

Report No. 3157 **August 3, 2020**

CONSUMER & GOVERNMENTAL AFFAIRS BUREAU
REFERENCE INFORMATION CENTER
PETITION FOR RULEMAKINGS FILED

Interested persons may file statements opposing or supporting the Petition for Rulemaking listed herein within 30 days and replies to statements opposing or supporting the Petition no later than 15 days after the filing of such a statement. *See* sections 1.4 and 1.405 of the Commission's rules for further information.

RM NO.	RULES SEC.	PETITIONER	DATE RECEIVED	NATURE OF PETITION
11862	47 U.S.C § 230	National Telecommunications and Information Administration	7/27/2020	Clarify provisions of Section 230 of the Communications Act of 1934, as amended.

(US Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Section 230 of the	)	File No. RM-_____
Communications Act of 1934	)	

To: The Commission

PETITION FOR RULEMAKING OF THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

National Telecommunications and
Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230
(202) 482-1816

July 27, 2020

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Section 230 of the	)	File No. RM-_____
Communications Act of 1934	)	

To: The Commission

PETITION FOR RULEMAKING OF THE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

Pursuant to section 1.401 of the Code of Federal Regulations,[1] in accordance with Executive Order 13925 (E.O. 13925),[2] and through the National Telecommunications and Information Administration (NTIA), the Secretary of Commerce (Secretary) respectfully requests that the Federal Communications Commission (FCC or Commission) initiate a rulemaking to clarify the provisions of section 230 of the Communications Act of 1934, as amended.[3] NTIA, as the President's principal adviser on domestic and international telecommunications and information policy, is charged with developing and advocating policies concerning the regulation of the telecommunications industry and "ensur[ing] that the views of the executive branch on telecommunications matters are effectively presented to the Commission . . . ."[4] Specifically, per E.O. 13925, NTIA requests that the Commission propose rules to clarify:

[1] 47 CFR § 1.401(a).
[2] Exec. Order No. 13925: Preventing Online Censorship, 85 Fed. Reg. 34,079 (June 2, 2020) (E.O. 13925).
[3] 47 U.S.C. § 230.
[4] 47 U.S.C. § 902(b)(2)(J); see also 47 U.S.C. §§ 901(c)(3), 902(b)(2)(I) (setting forth related duties).

(i) the interaction between subparagraphs (c)(1) and (c)(2) of section 230, in particular to clarify and determine the circumstances under which a provider of an interactive computer service that restricts access to content in a manner not specifically protected by subparagraph (c)(2)(a) may also not be able to claim protection under subparagraph (c)(1);[5]

(ii) the conditions under which an action restricting access to or availability of material is not "taken in good faith" within the meaning of subparagraph (c)(2)(A) of section 230, particularly whether actions can be "taken in good faith" if they are

(A) deceptive, pretextual, or inconsistent with a provider's terms of service; or

(B) taken after failing to provide adequate notice, reasoned explanation, or a meaningful opportunity to be heard;[6] and

(iii) any another proposed regulation that NTIA concludes may be appropriate to advance the policy described in subsection (a) of E.O. 13925, to impose disclosure requirements similar those imposed on other internet companies, such as major broadband service providers, to promote free and open debate on the internet.[7]

[5] See infra sections V.E.1, V.E.3 and section V.E.4.
[6] See infra section V.E.2.
[7] See infra section VI.

I. Statement of Interest

Since its inception in 1978, NTIA has consistently supported pro-competitive, pro-consumer telecommunications and internet policies. NTIA files this petition pursuant to E.O. 13925 to ensure that section 230 of the Communications Act of 1934, as amended, continues to further these goals. The President, through E.O. 13925, has directed the Secretary to file this petition for rulemaking through NTIA.[8]

II. Summary of Argument

Freedom of expression defends all our other freedoms. Only in a society that protects free expression can citizens criticize their leaders without fear, check their excesses, and expose their abuses. As Ben Franklin stated, "[w]hoever would overthrow the Liberty of a Nation, must begin by subduing the Freeness of Speech."[9] However, social media and its growing dominance present troubling questions on how to preserve First Amendment ideals and promote diversity of voices in modern communications technology. Social media's power stems in part from the legal immunities granted by the Communications Decency Act of 1996.[10] Congress passed the statute in the beginning of the internet age with the goal of creating a safe internet for children. It did so by protecting children from pornography and providing incentives for platforms to

[8] E.O. 13925, Section 2(b).
[9] Benjamin Franklin, Silence Dogood No. 8, The New-England Courant, July 9, 1722.
[10] Communications Decency Act of 1996 (CDA), Pub. L. No. 104-104, 110 Stat. 133, Title V—Obscenity and Violence, § 509 "Online family empowerment," codified at 47 U.S.C. 230, "Protection for private blocking and screening of offensive material." The CDA was incorporated as Title V to the Telecommunications Act of 1996, which in turn, was incorporated in the Communications Act of 1934. While these laws are all now part of the same statute, they do have separate histories and will be referred to individually when necessary.

remove harmful content. While the Supreme Court struck down the provisions limiting pornography, section 230 remained.[11]

Section 230 is the legislative response to a New York state case, Stratton Oakmont, Inc. v. Prodigy Servs. Co.[12] In this case, the court extended tort liability to internet bulletin boards and ruled that defendant Prodigy Services Company would be liable for the entire content of their platform if they engaged in editing and moderation to remove distasteful content.[13] Congress intended section 230 to offer platforms immunity from liability under certain circumstances, namely to encourage platforms to moderate specific types of material, mostly that are sexual or inappropriate to minors. It is vital to remember, however, that Congress in section 230 also had the express purpose of ensuring that the "Internet and other [internet platforms] offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity."[14]

Times have changed, and the liability rules appropriate in 1996 may no longer further Congress's purpose that section 230 further a "true diversity of political discourse." A handful of large social media platforms delivering varied types of content over high-speed internet have replaced the sprawling world of dial-up Internet Service Providers (ISPs) and countless bulletin boards hosting static postings. Further, with artificial intelligence and automated methods of textual analysis to flag harmful content now available, unlike at the time of Stratton Oakmont, Inc., platforms no longer need to manually review each individual post but can review, at much

[11] Reno v. American Civil Liberties Union, 521 U.S. 844 (1997).
[12] 1995 WL 323710 (N.Y. Sup. Ct., May 24, 1995) (unpublished). See also, Force v. Facebook, Inc., 934 F.3d 53, 63-64 (2d Cir. 2019) ("To overrule Stratton . . . .").
[13] Stratton Oakmont, 1995 WL 323710, at *3.
[14] 47 U.S.C. § 230(a)(3).

lower cost, millions of posts.[15] Thus, the fundamental assumptions driving early section 230 interpretation are antiquated and lack force, thus necessitating a recalibration of section 230 protections to accommodate modern platforms and technologies.

The FCC should use its authorities to clarify ambiguities in section 230 so as to make its interpretation appropriate to the current internet marketplace and provide clearer guidance to courts, platforms, and users. NTIA urges the FCC to promulgate rules addressing the following points:

1. Clarify the relationship between subsections (c)(1) and (c)(2), lest they be read and applied in a manner that renders (c)(2) superfluous as some courts appear to be doing.

2. Specify that Section 230(c)(1) has no application to any interactive computer service's decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service.

3. Provide clearer guidance to courts, platforms, and users, on what content falls within (c)(2) immunity, particularly section 230(c)(2)'s "otherwise objectionable" language and its requirement that all removals be done in "good faith."

4. Specify that "responsible, in whole or in part, for the creation or development of information" in the definition of "information content provider," 47 U.S.C. § 230(f)(3), includes editorial decisions that modify or alter content, including but not limited to substantively contributing to, commenting upon, editorializing about, or presenting with a discernible viewpoint content provided by another information content provider.

[15] Adrian Shahbaz & Allie Funk, "Freedom on the Net 2019 Key Finding: Governments harness big data for social media surveillance," Freedom House, Social Media Surveillance, https://freedomhouse.org/report/freedom-on-the-net/2019/the-crisis-of-social-media/social-media-surveillance ("Social media surveillance refers to the collection and processing of personal data pulled from digital communication platforms, often through automated technology that allows for real-time aggregation, organization, and analysis of large amounts of metadata and content . . . . Advances in artificial intelligence (AI) have opened up new possibilities for automated mass surveillance.").

5. Mandate disclosure for internet transparency similar to that required of other internet companies, such as broadband service providers.

III. The Commission Should Act to Protect Free Speech Online

New regulations guiding the interpretation of section 230 are necessary to facilitate the provisions' interpretation in a way that best captures one of the nation's most important Constitutional freedoms. "Free speech is the bedrock of American democracy . . . . The freedom to express and debate ideas is the foundation for all of our rights as a free people."[16] Our democracy has long recognized that control of public discourse in the hands of too few stifles freedom of expression and risks undermining our political institutions. For centuries, Americans have taken action to maintain the free flow of information and ideas to ensure the fullest and most robust marketplace of ideas—from the Postal Service Act of 1792, one of Congress's first acts which established preferential rates for newspapers,[17] to nondiscrimination requirements for telegraphs and telephones,[18] to antitrust actions to ensure the free flow of news stories,[19] and to efforts to limit undue dominance in broadcast and cable media to guarantee the flow of information to television viewers.[20]

Yet today, free speech faces new threats. Many Americans follow the news, stay in touch with friends and family, and share their views on current events through social media and other

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[16] E.O. 13925, Section 1.
[17] Richard B. Kielbowicz, News in the Mail: The Press, Post Office and Public Information, 1700-1860s, at 33-34 (1989).
[18] Thomas B. Nachbar, The Public Network, 17 CommLaw Conspectus 67, 77 (2008). ("Nondiscriminatory access is . . . the order of the day for . . . telecommunications, and even cable television.").
[19] Associated Press v. United States, 326 U.S. 1 (1945).
[20] Turner Broad. Sys, Inc. v. F.C.C., 512 U.S. 622 (1994); F.C.C. v. National Citizens Comm. for Broad., 436 U.S. 775 (1978); Nat'l Broad. Co. v. United States, 319 U.S. 190 (1943); Time Warner Ent. Co. L.P. v. F.C.C., 240 F.3d 1126 (D.C. Cir. 2001).

online platforms. These platforms function, as the Supreme Court recognized, as a 21st century equivalent of the public square.[21] Provision and control of the public square is a public trust. Because it entails selecting which speech gets heard and by whom, social media can assimilate a collective conversation into a corporate voice with a corporate point of view. As the E.O. explains, "[w]hen large, powerful social media companies censor opinions with which they disagree, they exercise a dangerous power. They cease functioning as passive bulletin boards, and ought to be viewed and treated as content creators."[22] The Commission itself has previously recognized the importance of enabling "the widest possible dissemination of information from diverse and antagonistic sources" and "assuring that the public has access to a multiplicity of information sources" as internet regulations' essential goal.[23]

Unfortunately, large online platforms appear to engage in selective censorship that is harming our national discourse. The E.O. notes that "[t]ens of thousands of Americans have reported online platforms "flagging" content as inappropriate, even though it does not violate any stated terms of service" and is not unlawful. The platforms "mak[e] unannounced and unexplained changes to company policies that have the effect of disfavoring certain viewpoints and delet[e] content and entire accounts with no warning, no rationale, and no recourse."[24] FCC

[21] Packingham v. North Carolina, 137 S. Ct. 1730, 1732 (2017) ("Social media . . . are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge.").
[22] E.O. 13925, Section 1.
[23] Federal Communications Commission, In the Matter of Protecting and Promoting the Open Internet, GN Docket No. 14-28, FCC 15-24, Report and Order on Remand, Declaratory Ruling, and Order, 2015 WL 1120110, *268 (¶ 545) (quoting Turner, 512 U.S. at 663).
[24] E.O. 13925, Section 1; Divino Group LLC, et al. v. Google LLC, et al., 5:19-cv-4749-VKD, Dkt #20 (2d Am. Compl.) at ¶¶ 119-123, 128-247 (N.D. Cal. (San Jose Division), dated Aug. 13, 2019) (class action complaint alleging YouTube censorship of LGBT+ content).

Commissioner Brendan Carr has remarked, "there's no question that [large social media platforms] are engaging in editorial conduct, that these are not neutral platforms."[25] Others have expressed shock that while large social media platforms will censor or fact-check constitutionally elected democratic leaders, many social media companies welcome and facilitate censorship by the Chinese Communist Party, thereby spreading disinformation and communist propaganda related to China's mass imprisonment of religious minorities, the origins of the COVID-19 pandemic, and the pro-democracy protests in Hong Kong.[26] Unfortunately, few academic empirical studies exist of the phenomenon of social media bias.

Much of social media's overarching influence and power stems from the immunities it enjoys under expansive interpretations of section 230 of the Communications Decency Act,[27] a provision Congress passed in 1996 at the beginning of the internet era. Many early cases, understandably protective of a nascent industry, read section 230's protections expansively. But, given the maturing internet economy and emergence of dominant social media platforms, the FCC should re-examine section 230, as well as other provisions of the Communications Act of 1934. The FCC should determine how section 230 can best serve its goals of promoting internet

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[25] Jan Jekielek, On Social Media Bias, Trump's Executive Order, and the China Data Threat: FCC Commissioner Brendan Carr, The Epoch Times, June 1, 2020, https://www.theepochtimes.com/on-social-media-bias-trumps-executive-order-and-the-china-data-threat-fcc-commissioner-brendan-carr_3372161.html.

[26] See, e.g., Sigal Samuel, China paid Facebook and Twitter to help spread anti-Muslim propaganda, Vox, Aug. 22, 2019, https://www.vox.com/future-perfect/2019/8/22/20826971/facebook-twitter-china-misinformation-ughiur-muslim-internment-camps; Ryan Gallagher, China's Disinformation Effort Targets Virus, Researcher Says, Bloomberg News, May 12, 2020, https://www.bloomberg.com/news/articles/2020-05-12/china-s-disinformation-campaign-targets-virus-and-businessman; James Titcomb & Laurence Dodds, Chinese state media use Facebook adverts to champion Hong Kong crackdown, June 8, 2020, https://www.telegraph.co.uk/technology/2020/06/08/chinese-state-media-use-facebook-adverts-champion-hong-kong/.

[27] 47 U.S.C. § 230.

diversity and a free flow of ideas, as well as holding dominant platforms accountable for their editorial decisions, in new market conditions and technologies that have emerged since the 1990s.[28]

IV. Relevant Facts and Data: Technological and Market Changes

Contemporary social media platforms have vastly different offerings, business models, relationships to users and customers, and, indeed, roles in national life than the early online bulletin boards that Prodigy and AOL offered in 1996. The FCC should recognize that the liability protections appropriate to internet firms in 1996 are different because modern firms have much greater economic power, play a bigger, if not dominant, role in American political and social discourse, and, with machine learning and other artificial techniques, have and exercise much greater power to control and monitor content and users.

CompuServe, Prodigy, America Online, and their competitors had fundamentally different business models from modern social media companies.[29] They had proprietary server banks, and their business model was to charge consumers for access, with significant surcharges

[28] See, e.g., Cubby, Inc. v. CompuServe Inc., 776 F.Supp. 135 (S.D.N.Y. 1991) (addressing CompuServe's 1990 service providing various online subscriber forums for certain groups).
[29] Andrew Pollack, Ruling May Not Aid Videotex, N.Y. Times, Sept. 15, 1987, at D1, https://www.nytimes.com/1987/09/15/business/ruling-may-not-aid-videotex.html (last visited July 27, 2020) ("The Videotex Industry Association estimates that there are 40 consumer-oriented services, such as CompuServe and the Source, in the United States, with a total membership of 750,000.").

for use of social features.[30] They were not interoperable,[31] There was thus no online "general public" population about whom information could be known, nor were there business partners to whom information on members of the public could be aggregated and sold. Online services faced a competitive landscape.

Online services competed with one another by commissioning or developing their own games, chat systems, financial-markets reporting, news services, and in-network mail services.[32] As users paid to connect, and thus directly funded online services, most online services did not contain advertising. The online service business model was not significantly reliant on third-party content because access to proprietary content was at the heart of online services' marketing

[30] Id. ("It is unclear, for instance, to what extent the gateway will be able to tell consumers where to go for the information they desire . . . . Each information service has its own commands for information retrieval."); Michael J. Himowitz, A look at on-line services CompuServe and Prodigy, The Baltimore Sun, Jan. 17, 1994 ("CompuServe [costs] $8.95 per month . . . . Effective Feb. 6, rates for forums and extended services . . . are an additional $4.80 per hour at 1200 or 2400 Baud, $9.60 per hour at 9600 or 14,400 Baud . . . . Prodigy: Most popular plan charges $14.95 per month . . . Additional Plus hours [for use of bulletin boards and stock market prices] are $3.60 each.").

[31] Pollack, supra note 29 ("Each information service has its own commands for information retrieval. With a useful gateway [which did not yet exist], the user would need to know only one set of commands and the gateway would translate them."); David Bernstein, Interoperability: The Key to Cloud Applications, https://e.huawei.com/en/publications/global/ict_insights/hw_376150/feature%20story/HW_376286 (last visited July 19, 2020) ("[T]he original online services such as AOL, Prodigy, and CompuServe had no interoperability between them. Content posted on one service could not be consumed by a client connected to a different service. Email could not be sent from a user on one service to a user on another.").

[32] Joanna Pearlstein, MacWorld's Guide to Online Services, MacWorld, Aug. 1994, at 90 ("Core services include general, business, and sports news; computer forums and news; reference materials; electronic mail and bulletin boards; business statistics and data; games; shopping services; travel services; and educational reference material. Still, the different online services do have different emphases, so even though they all offer a range of basic services, they are not interchangeable.").

efforts.[33] The online services of the late 1990s ran online bulletin boards as a minor sideline and used volunteer moderators from the computer hobbyist community.[34] Their business model was based on fees for connection time and professional database access, not community content.

One result of this model was that monitoring users and their content was a burden and regulatory imposition. Zeran, a leading and widely cited case on moderation, reflects this understanding of the technology of that time.[35] The Zeran court took the view, which most section 230 cases accept, that "liability [for third-party posts] upon notice [by an offended

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[33] James Coats, Getting on-line with cyberspace heavyweights, Chicago Tribune, Feb. 28, 1993 at C8 ("GEnie's greatest value to me is that it serves as a gateway to the ultraexpensive Dow Jones News/Retrieval service. Typing DOWJONES on GEnie gets me access to hundreds of thousands of newspaper articles - but at a cost well above $2 a minute. Still, when I'm involved in personal research, it empowers me with access to more than 100 different newspapers, wire services and magazines . . . . A costly service [on CompuServe] called IQUEST, for example, gets you access to thousands of newspapers, magazines, books and other research materials. A magazine database lets you search hundreds of thousands of back issues of publications from Playboy to Foreign Policy. The catch is that each article you decide to read in full costs $1.50 . . . . Tremendous amounts of information about stocks and investing can be had as well, for a price. You can follow favorite stocks by BasicQuotes and seek out news by company. Much of the famous Standard and Poor's research data can be had on CompuServe's S&P Online. Most company filings with the Securities and Exchange Commission can be downloaded on a service called Disclosure. I make heavy use of CompuServe's Executive News Service, which gives me an electronic 'clipping service' providing each day's news about dozens of firms I follow for my job, as well as other topics . . . . But Delphi takes the Internet much further than the other boards, which confine Internet traffic to electronic mail. With Delphi you can actually hook your home computer up with mainframes and minicomputers all around the world and read and download an almost unimaginably diverse wealth of files.").

[34] Catherine Buni & Soraya Chemaly, The Secret Rules of the Internet: the murky history of moderation, and how it's shaping the future of free speech, The Verge (April 13, 2016), https://www.theverge.com/2016/4/13/11387934/internet-moderator-history-youtube-facebook-reddit-censorship-free-speech (last visited July 19, 2020) ("Moderation's initially haphazard, laissez-faire culture has its roots here. Before companies understood how a lack of moderation could impede growth and degrade brands and community, moderators were volunteers; unpaid and virtually invisible. At AOL, moderation was managed by a Community Leader program composed of users who had previously moderated chat rooms and reported 'offensive' content. They were tasked with building 'communities' in exchange for having their subscription fees waived. By 2000, companies had begun to take a more proactive approach.").

[35] Zeran v. Am. Online, Inc., 129 F.3d 327 (4th Cir. 1997).

viewer] reinforces service providers' incentives to restrict speech and abstain from self-regulation."[36] The court went on to explain that online services cannot possibly take responsibility for third-party content due to its volume; as such, online services will simply prohibit all such content unless they are protected from liability for it. In the court's words:

> "If computer service providers were subject to distributor liability, they would face potential liability each time they receive notice of a potentially defamatory statement—from any party, concerning any message. Each notification would require a careful yet rapid investigation of the circumstances surrounding the posted information, a legal judgment concerning the information's defamatory character, and an on-the-spot editorial decision whether to risk liability by allowing the continued publication of that information. Although this might be feasible for the traditional print publisher, the sheer number of postings on interactive computer services would create an impossible burden in the Internet context."[37]

However, today's social media companies have adopted a different business model. Rather than provide database access, like Prodigy did, social media offers primarily third-party content.[38] Rather than charge fees, social media platforms profile users in order to categorize

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[36] Id. at 333.
[37] Id.
[38] Facebook Investor Relations, https://investor.fb.com/resources/default.aspx (last visited July 19, 2020) ("Founded in 2004, Facebook's mission is to give people the power to build community and bring the world closer together. People use Facebook to stay connected with friends and family, to discover what's going on in the world, and to share and express what matters to them."); Twitter Investor Relations, https://investor.twitterinc.com/contact/faq/default.aspx (last visited July 19, 2020) ("What is Twitter's mission statement? The mission we serve as Twitter, Inc. is to give everyone the power to create and share ideas and information instantly without barriers. Our business and revenue will always follow that mission in ways that improve – and do not detract from – a free and global conversation."); Google, Our Approach to Search, https://www.google.com/search/howsearchworks/mission/ (last visited July 19, 2020) ("Our company mission is to organize the world's information and make it universally accessible and useful."); YouTube Mission Statement, https://www.youtube.com/about/ (last visited July 19, 2020) ("Our mission is to give everyone a voice and show them the world. We believe that everyone deserves to have a voice, and that the world is a better place when we listen, share and build community through our stories."); Matt Buchanan, Instagram and the Impulse to Capture Every Moment, The New Yorker, June 20, 2013, https://www.newyorker.com/tech/annals-of-technology/instagram-and-the-impulse-to-capture-every-moment (last visited July 27, 2020)

them and connect them to advertisers and other parties interested in user information.[39] Online platforms like Twitter, Facebook, and YouTube have content moderation at the heart of their business models. Unlike the early internet platforms, they have invested immense resources into both professional manual moderation and automated content screening for promotion, demotion, monetization, and removal.[40]

("When I think about what Instagram is, I think about moments," said Kevin Systrom, the photo-sharing service's co-founder and C.E.O. "Our mission is to capture and share the world's moments.").

[39] Len Sherman, Why Facebook Will Never Change Its Business Model, Forbes.com, Apr, 16, 2018, https://www.forbes.com/sites/lensherman/2018/04/16/why-facebook-will-never-change-its-business-model/#7cdac11c64a7 (last visited July 27, 2020) ("By now, it's widely understood that Facebook's voracious appetite for user data is driven by their business model which charges advertisers for access to precisely targeted segments of their massive consumer database. No one knows more about more consumers than Facebook"); Twitter and Facebook have differing business models, The Economist, June 6, 2020, https://www.economist.com/business/2020/06/04/twitter-and-facebook-have-differing-business-models (last visited July 27, 2020) ("At first blush, Twitter and Facebook look similar. Each is a social network, connecting users online and presenting them with content in a 'feed', a never-ending list of posts, pictures and videos of pets. Each makes money by selling advertising, and thus has an interest in using every trick to attract users' attention. And each employs gobbets of data gleaned from users' behaviour to allow advertisers to hit targets precisely, for which they pay handsomely"); Enrique Dans, Google Vs. Facebook: Similar Business Models, But With Some Very Big Differences, Forbes.com, Feb. 2, 2019, https://www.forbes.com/sites/enriquedans/2019/02/02/google-vs-facebook-similar-business-models-but-with-some-very-big-differences/#6ab9408541ef (last visited July 27, 2020) ("Google does not sell my data or pass it on to any third party, it simply allows that third party to display an advertisement to a segment of its database that includes me, based on certain variables . . . . What is the result of Google knowing about us and our online interests? We receive ads that largely reflect those interests and we still have some control over what we see.").

[40] Zoe Thomas, Facebook content moderators paid to work from home, BBC.com, Mar. 18, 2020, https://www.bbc.com/news/technology-51954968 (last visited July 27, 2020) ("Facebook has approximately 15,000 content moderators in the US, who are hired by third-party contracting companies"); Elizabeth Dwoskin, et al., Content moderators at YouTube, Facebook and Twitter see the worst of the web — and suffer silently, Washington Post, July 25, 2019, https://www.washingtonpost.com/technology/2019/07/25/social-media-companies-are-outsourcing-their-dirty-work-philippines-generation-workers-is-paying-price/ (last visited July 27, 2020) ("In the last couple of years, social media companies have created tens of thousands of jobs around the world to vet and delete violent or offensive content . . . ."); Shannon Bond, Facebook, YouTube Warn Of More Mistakes As Machines Replace Moderators, National Public

Understanding how new entrants can or cannot participate in these intermediary markets is therefore key in understanding appropriate liability regimes; this is particularly important because liability shields can deter entrance. Market observers have significant concerns about barriers to entrance for new social media companies as well as social media's role with other edge providers in creating mediation markets. It is no secret that today's online platforms exist in highly concentrated markets.[41] Moreover, the relationship between social media and their adjacent markets is unclear, with mergers and other agreements having the potential for unexpected anticompetitive results.[42] Social media firms also demonstrate network effects and other barriers to entry, which frequently lead to weaker competition.[43] This lack of competition is particularly troubling given the decrease of new entrants documented in the broader economy.[44]

Section 230 was designed to assist the nascent internet industry. Pivotal judicial decisions, such as Zeran, interpreted ambiguous language in section 230 broadly, but at a time when different cost structures, business models, and markets prevailed. Given the rapidly

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Radio, March 31, 2020, https://www.npr.org/2020/03/31/820174744/facebook-youtube-warn-of-more-mistakes-as-machines-replace-moderators (last visited July 27, 2020) ("Facebook, YouTube and Twitter are relying more heavily on automated systems to flag content that violate their rules . . . . Tech companies have been saying for years that they want computers to take on more of the work of keeping misinformation, violence and other objectionable content off their platforms. Now the coronavirus outbreak is accelerating their use of algorithms rather than human reviewers.").

[41] Justin Haucap & Ulrich Heimeshoff, Google, Facebook, Amazon, eBay: Is the Internet driving competition or market monopolization? 11 Int. Econ. Policy 49–61 (2014).

[42] Carl Shapiro, Protecting Competition in the American Economy: Merger Control, Tech Titans, Labor Markets. 33(3) Journal of Economic Perspectives 69 (2019), available at http://faculty.haas.berkeley.edu/shapiro/protectingcompetition.pdf.

[43] Steven Berry, Martin Gaynor & Fiona Scott Morton, Do Increasing Markups Matter? Lessons from Empirical Industrial Organization, 33(3) Journal of Economic Perspectives 44 (2019).

[44] Germán Gutiérrez & Thomas Philippon, The Failure of Free Entry. NBER Working Paper No. 26001 (June 2019), available at https://www.nber.org/papers/w26001.pdf.

changing markets and relationship between market structure and optimal liability rules, NTIA urges the FCC to re-examine section 230 and work towards transparency in these markets.

V. The Authority and Need for Issuing Regulations for Section 230

This section sets forth the FCC's authority to issue regulations to interpret section 230 and shows how regulations are necessary to resolve the statute's ambiguities that the E.O. identified. This section further explains how the FCC has jurisdiction to issue regulations, outlines the background and history of section 230, explains its structure, and shows how courts have relied upon its ambiguities to make overly expansive interpretations.

Finally, it examines how the section's ambiguities should be resolved. Specifically, NTIA respectfully requests the FCC to:

- clarify the relationship between 230(c)(1) and (c)(2);
- explain the meaning of "good faith" and "otherwise objectionable" in section 230(c)(2);
- specify how the limitation on the meaning of "interactive computer service" found in section 230(f)(2) should be read into section 230(c)(1); and,
- explicate the meaning of "treated as a speaker or publisher" in section 230(c)(1).

A. The Commission's Power to Interpret Section 230 of the Communications Decency Act

Section 201(b) of the Communications Act (Act) empowers the Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out this chapter."[45] Under this authority, the FCC should promulgate rules to resolve ambiguities in Section 230. The Supreme Court has confirmed that "the grant in section 201(b) means what it

[45] 47 U.S.C. § 201(b).

says: The FCC has rulemaking authority to carry out the 'provisions of this Act.'" Section 230, in turn, was incorporated into the Act – in the same portion of the Act, Title II, as section 201(b) – by the Telecommunications Act of 1996 (1996 Act). The fact that section 230 was enacted after section 201(b) is of no consequence; the Supreme Court repeatedly has held that the Commission's section 201(b) rulemaking power extends to all subsequently enacted provisions of the Act, specifically identifying those added by the Telecommunications Act of 1996.[46] Thus, the Commission has authority under section 201(b) to initiate a rulemaking to implement section 230. That broad rulemaking authority includes the power to clarify the language of that provision, as requested in the petition.

The Commission has authority to implement section 230 through regulation even if this section was added to the 1934 Act through the amendments in the Telecommunications Act of 1996. It does not matter if the provision specifically mentions or contemplates FCC regulation. For instance, section 332(c)(7), which was also added to the Act by the 1996 Act, limits State and local decision-making on the placement, construction, or modification of certain wireless service facilities. The section makes no mention of FCC authority, only alluding to the Commission in passing and giving it no role in the provision's implementation. The Supreme Court nonetheless, upheld Commission's authority to issue regulations pursuant to section

[46] AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366, 378 (1999) ("We think that the grant in § 201(b) means what it says: The FCC has rulemaking authority to carry out the "provisions of this Act," which include §§ 251 and 252, added by the Telecommunications Act of 1996"); City of Arlington v. FCC, 668 F.3d 229, 250 (5th Cir. 2012), aff'd, 569 U.S. 290 (2013) ("Section 201(b) of that Act empowers the Federal Communications Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out [its] provisions. Of course, that rulemaking authority extends to the subsequently added portions of the Act.").

332(c)(7) for the simple reason that it was codified within the 1934 Act, and section 201(b) empowers the Commission to promulgate rules interpreting and implementing the entire Act.[47]

Similarly, in Iowa Utilities, the Supreme Court ruled that the FCC had rulemaking authority to implement sections 251 and 252 of the Act.[48] As with section 332, these sections did not explicitly grant the Commission power over all aspects of their implementation, arguably excluding intrastate and other areas. Nonetheless, the Court ruled that "§ 201(b) explicitly gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies."[49] These two decisions, and their underlying rationales, compel the same result for a Commission rulemaking to interpret section 230, and the rationale is simple and inarguable: if Congress chooses to codify a section into the 1934 Communications Act, then section 201(b) gives the FCC the power to clarify and implement it through regulation.

Neither section 230's text, nor any speck of legislative history, suggests any congressional intent to preclude the Commission's implementation. This silence further underscores the presumption that the Commission has power to issue regulations under section 230. As the Fifth Circuit noted with respect to section 332(c)(7), "surely Congress recognized that it was legislating against the background of the Communications Act's general grant of rulemaking authority to the FCC." [50] Accordingly, if Congress wished to exclude the Commission from the interpretation of section 230, "one would expect it to have done so explicitly." Congress did not do so and, as was the case for section 332(c)(7), that decision

[47] City of Arlington, 569 U.S. at 293 ("Of course, that rulemaking authority [of section 201(b)] extends to the subsequently added portions of the Act").
[48] Iowa Util. Bd., 525 U.S. at 378-87.
[49] Iowa Util. Bd., 525 U.S. at 380.
[50] Arlington, 668 F.3d at 250.

opens an ambiguity in section 230 that the Commission may fill pursuant to its section 201(b) rulemaking authority.

B. Background to Section 230

Section 230 reflects a congressional response to a New York state case, Stratton Oakmont, Inc. v. Prodigy Servs. Co., decided in 1995.[51] In Stratton Oakmont, a New York trial court reasoned that Prodigy had become a "publisher" under defamation law because it voluntarily deleted some messages from its message boards "on the basis of offensiveness and 'bad taste,'" and was liable for the acts of its agent, the "Board Leader" of the message board, who it had hired to monitor postings on its bulletin board. The court held that Prodigy, having undertaken an affirmative duty to remove content, therefore was legally responsible for failing to remove an allegedly defamatory posting.[52] The U.S. Court of Appeals for the Ninth Circuit explained that: "[t]he Stratton Oakmont court concluded that when a platform engages in content

[51] Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC, 521 F.3d 1157, 1163 (9th Cir. 2008) ("Section 230 was prompted by a state court case holding Prodigy responsible for a libelous message posted on one of its financial message boards"); Barnes v. Yahoo!, Inc., 570 F.3d 1096, 1101 (9th Cir. 2009) ("This is not surprising, because, as we and some of our sister circuits have recognized, Congress enacted the Amendment in part to respond to a New York state court decision, Stratton Oakmont, [citations omitted,] which held that an internet service provider could be liable for defamation."); Barrett v. Rosenthal, 40 Cal. 4th 33, 44, 146 P.3d 510, 516 (2006) ("The legislative history indicates that section 230 was enacted in response to an unreported New York trial court case."); Sen. Rep. No. 104-230, 2d. Session at 194 (1996) ("One of the specific purposes of [section 230] is to overrule Stratton Oakmont v. Prodigy and any other similar decisions"); see also H.R. Conf. Rep. No. 104-458, at 208 ("The conferees believe that [decisions like Stratton Oakmont] create serious obstacles to the important federal policy of empowering parents to determine the content of communications their children receive through interactive computer services"); 141 Congressional Record H8469–H8470 (daily ed., June 14, 1995) (statement of Rep. Cox, referring to disincentives created by the Stratton Oakmont decision); Blumenthal v. Drudge, 992 F. Supp. 44, 52 n.13 (D.D.C. 1998) ("the legislative history makes clear that one of the primary purposes of Section 230 was to overrule the Stratton Oakmont decision").

[52] Stratton Oakmont, 1995 WL 323720 at *4.

moderation, or 'some voluntary self-policing,' the platform becomes 'akin to a newspaper publisher, and thus responsible for messages on its bulletin board that defamed third parties.'"[53]

Stratton Oakmont applied established tort law, which makes "publishers" liable for defamatory material.[54] Traditionally, tort law defines "publication" as simply the "communication intentionally or by a negligent act to one other than the person defamed."[55] But because the publication element of a defamation claim can also be satisfied when someone unreasonably fails to remove a communication exhibited via means in his possession or control, the Stratton Oakmont court concluded that Prodigy's content moderation or "voluntary self-policing" of the bulletin board rendered Prodigy a publisher of a defamatory statement on its board. Therefore, Prodigy was liable as a publisher.[56]

Stratton Oakmont distinguishes an earlier case, Cubby, Inc. v. CompuServe, Inc.,[57] which ruled an internet bulletin board was not the publisher of material on its bulletin board. The key distinguishing factor was that in Cubby, CompuServe did not moderate postings. The court ruled that CompuServe was not a publisher, but rather what tort law terms a "distributor," i.e., one "who merely transmit[s] defamatory content, such as news dealers, video rental outlets,

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[53] Fair Hous. Council, 521 F.3d at 1163.
[54] Barnes, 570 F.3d at 1104, citing W. Page Keeton, et al., Prosser and Keeton on the Law of Torts § 113, at 799 (5th ed. 1984) ("[E]veryone who takes part in the publication, as in the case of the owner, editor, printer, vendor, or even carrier of a newspaper is charged with publication."); see also Cianci v. New Times Publ'g Co., 639 F.2d 54, 60–61 (2d Cir.1980) (noting the "black-letter rule that one who republishes a libel is subject to liability just as if he had published it originally").
[55] Restatement (Second) of Torts § 577.
[56] Stratton Oakmont, 1995 WL 323710 at *5 ("PRODIGY's conscious choice, to gain the benefits of editorial control, has opened it up to a greater liability than CompuServe and other computer networks that make no such choice."); Barnes, 570 F.3d at 1102 ("publication involves reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content"); see Rodney A. Smolla, Law of Defamation § 4:77 (2d ed., 1999).
[57] Cubby, 776 F.Supp. 135.

bookstores, libraries, and other distributors and vendors."[58] "Distributors" are subject to liability "if, but only if, they know or have reason to know of the content's defamatory character."[59] Thus, publishers had strict liability for materials they published, whereas distributors only had liability for publishing defamation with actual or constructive knowledge of its defamatory character.[60] The Stratton Oakmont court reasoned that, in Cubby, CompuServe "had no opportunity to review the contents of the publication at issue before it was uploaded into CompuServe's computer banks," and, therefore, CompuServe had no liability for defamatory posts on platforms that it owned and controlled as distributor.[61]

While following established common law tort rules, the Stratton Oakmont and Cubby cases presented internet platforms with a difficult choice: voluntarily moderate unlawful or obscene content and thereby become liable for all messages on their bulletin boards, or do nothing and allow unlawful and obscene content to cover their bulletin boards unfiltered. In litigation, Prodigy claimed that the "sheer volume" of message board postings it received—by our current standards a humble "60,000 a day"—made manually reviewing every message impossible. If forced to choose between taking responsibility for all messages and deleting no messages at all, it would take the latter course.[62] Thus, given the technological differences between an internet platform and a bookstore or library, the former's ability to aggregate a much greater volume of information, traditional liability rules became strained. Tort law risked dis-incentivizing platforms from editing or moderating any content for fear they would become liable for all third-party content.

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[58] Smolla § 4:92.
[59] Restatement (Second) of Torts § 581(1) (1977).
[60] Prosser, supra note 54, § 113 at 803.
[61] Stratton Oakmont, 1995 WL 323710 at *2-3.
[62] Stratton Oakmont, 1995 WL 323710 at *3.

Congress intended section 230 to address this difficult liability problem, but nothing in the law's history, purpose or text allows for the conclusion that internet platforms should avoid all responsibility for their own editing and content-moderating decisions. Indeed, section 230 was originally titled the "Online Family Empowerment" amendment to the Communications Decency Act, which was titled, "protection for private blocking and screening of offensive material." [63] Responding to pornography and obscene material on the web, Congress designed section 230 to encourage platforms to moderate specific types of content, mostly related to sexual material inappropriate to minors. Congress did not intend a vehicle to absolve internet and social media platforms—which, in the age of dial-up internet bulletin boards, such as Prodigy, did not exist—from all liability for their editorial decisions.

Representatives Christopher Cox and Ron Wyden floated the bill that became section 230 as an alternative to Senator J. James Exon's bill that criminalized the transmission of indecent material to minors.[64] In public comments, Representative Cox explained that the section 230 would reverse Stratton Oakmont and advance the regulatory goal of allowing families greater power to control online content.[65] The final statute reflected his stated policy: "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

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[63] Telecommunications Act of 1996, Pub. L. No. 104-104, title V, Sec. 509 (1996).
[64] Robert Cannon, The Legislative History of Senator Exon's Communications Decency Act: Regulating Barbarians on the Information Superhighway, 49 Fed. Comm. L.J. 51 (1996); Felix T. Wu, Collateral Censorship and the Limits of Intermediary Immunity, 87 Notre Dame L. Rev. 293, 316 (2011); 141 Cong. Rec. H8468-69 (daily ed. Aug. 4, 1995); Ashcroft v. Am. Civil Liberties Union, 535 U.S. 564, 564 (2002) ("[T]he Communications Decency Act reflected Congress's response to the proliferation of pornographic, violent and indecent content on the web Congress' first attempt to protect children from exposure to pornographic material on the Internet.").
[65] See 141 Cong. Rec. H8469-70 (daily ed. Aug. 4, 1995) (statement of Rep. Cox).

services."[66] The comments in the Congressional record from supporting congressmen and women—and it received strong bi-partisan support—reveal an understanding that the Online Family Empowerment amendment, now codified as section 230, as a non-regulatory approach to protecting children from pornography,[67] intended to provide incentives for "Good Samaritan" blocking and screening of offensive material.

C. Section 230(c)'s Structure

To further these goals, Congress drafted the "Good Samaritan" exception to publisher liability. Section 230(c)(1) has a specific focus: it prohibits "treating" "interactive computer services," i.e., internet platforms, such as Twitter or Facebook, as "publishers." But, this provision only concerns "information" provided by third parties, i.e., "another internet content provider"[68] and does not cover a platform's own content or editorial decisions.

The text of section 230(c)(1) states:

(c) Protection for "Good Samaritan" blocking and screening of offensive material:

(1) Treatment of publisher or speaker

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[66] 47 U.S.C. § 230(b)(3).

[67] See 141 Cong. Rec. H8470 (1995) (statement of Rep. White) ("I want to be sure we can protect [children] from the wrong influences on the Internet. But . . . the last person I want making that decision is the Federal Government. In my district right now there are people developing technology that will allow a parent to sit down and program the Internet to provide just the kind of materials that they want their child to see. That is where this responsibility should be, in the hands of the parent. That is why I was proud to cosponsor this bill that is what this bill does . . . ."); id., (statement of Rep. Lofgren) ("[The Senate approach] will not work. It is a misunderstanding of the technology. The private sector is out giving parents the tools that they have. I am so excited that there is more coming on. I very much endorse the Cox-Wyden amendment . . . .").

[68] 47 U.S.C. § 230(c)(1).

> No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

Section (c)(2) also has a specific focus: it eliminates liability for interactive computer services that act 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."[69]

Subsection (c)(2) governs the degree to which some of the platform's own content moderation decisions receive any legal protection, stating:

> "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 . . . ."

Here, Congress protects "any action . . . taken in good faith to restrict access to or availability of material." This means any social media platform's editorial judgment, moderation, content editing or deletion receives legal immunity, but the plain words of the provision indicate that this protection only covers decisions to restrict access to certain types of enumerated content. As discussed infra, these categories are quite limited and refer primarily to traditional areas of media regulation—also consistent with legislative history's concern that private regulation could create family-friendly internet spaces—and only actions within these categories taken in "good faith."

[69] 47 U.S.C. § 230(c)(2).

D. Expansive Court Rulings Tied to Early Platforms and Outdated Technology

Courts have recognized that "Congress enacted this provision for two basic policy reasons: to promote the free exchange of information and ideas over the Internet and to encourage voluntary monitoring for offensive or obscene material."[70] Congress intended sections 230(c)(1) and (c)(2) to protect platform openness and monitoring for certain specific issues. But, as discussed infra, ambiguous language in these statutes allowed some courts to broadly expand section 230's immunity from beyond its original purpose into a bar any legal action or claim that involves even tangentially "editorial judgment."[71] These subsequent protections established from "speaker or publisher" are overly broad and expansive, and often have absolutely nothing to do with the original harm section 230 was meant to remedy: relieving platforms of the burden of reading millions of messages to detect for defamation as Stratton Oakmont would require. Far and above initially intended viewer protection, courts have ruled section 230(c)(1) offers immunity from contracts,[72] consumer fraud,[73] revenge pornography,[74]

[70] Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1122 (9th Cir. 2003).
[71] See, e.g., Sikhs for Justice "SFJ", Inc. v. Facebook, Inc., 144 F.Supp.3d 1088, 1094–1095 (N.D.Cal. 2015).
[72] Caraccioli v. Facebook, Inc., 167 F. Supp.3d 1056, 1064-66 (N.D. Cal. 2016) (dismissing breach of contract claim and Cal. Bus. & Prof. Code § 17200 unfair practices claim); Lancaster v. Alphabet Inc., No. 2016 WL 3648608, at *5 (N.D. Cal. July 8, 2016) (dismissing claim for breach of covenant of good faith and fair dealing); Jurin v. Google, Inc., 695 F. Supp. 2d 1117, 1122–23 (E.D. Cal. 2010) (dismissing claim for fraud); Fed. Agency of News LLC, et al. v. Facebook, Inc., 395 F. Supp. 3d 1295 (N.D. Cal. 2019) (dismissing discrimination claims under Title II and 42 U.S.C. § 1983); Obado v. Magedson, 43 Media L. Rep. 1737 (D.N.J. 2014) (dismissing claim for promissory estoppel), aff'd, 612 F. App'x 90 (3d Cir. 2015).
[73] See Gentry v. eBay, Inc., 121 Cal. Rptr. 2d 703 (Cal. Ct. App. 2002); Hinton v. Amazon, 72 F. Supp. 3d 685, 687 (S. D. Miss. 2014); Oberdorf v. Amazon, 295 F. Supp. 3d 496 (Mid. D. PA Dec. 21, 2017).
[74] Jones v. Dirty World Entertainment Holding LLC, 755 F.3d 398 (6th Cir. 2014); S.C. v. Dirty World LLC, 40 Media L. Rep. 2043 (W.D. Mo. 2012); Poole v. Tumblr, Inc., 404 F. Supp. 3d 637 (D. Conn. 2019).

anti-discrimination civil rights obligations,[75] and even assisting in terrorism.[76] By expanding protections beyond defamation, these courts extend to platforms a privilege to ignore laws that every other communications medium and business must follow and that are no more costly or difficult for internet platforms to follow than any other business.

The problem of overly expansive interpretations for section 230 is not merely hypothetical. Tens of thousands of Americans have reported, among other troubling behaviors, online platforms "flagging" content as inappropriate, even though it does not violate any stated terms of service; making unannounced and unexplained changes to company policies that have the effect of disfavoring certain viewpoints; and deleting content and entire accounts with no warning, no rationale, and no recourse. As FCC Commissioner Brendan Carr has observed, social media such as Twitter "punis[h] speakers based on whether it approves or disapproves of their politics."[77] One can hardly imagine a result more contrary to Congress's intent to preserve on the internet "a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity."[78]

Further, by making contract and consumer fraud claims concerning moderation unenforceable under section 230, courts seriously injure section 230's goal "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services."[79] Content moderation policies become, as FCC Commissioner Brendan

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[75] Sikhs for Justice "SFJ", Inc., 144 F. Supp.3d 1088, 1094-1095.
[76] Force, 934 F.3d at 57.
[77] Jon Brokin, Arstechnica, FCC Republican excitedly endorses Trump's crackdown on social media, May 29, 2020, https://arstechnica.com/tech-policy/2020/05/fcc-republican-excitedly-endorses-trumps-crackdown-on-social-media/.
[78] 47 U.S.C. § 230(a)(1).
[79] 47 U.S.C. § 230(b)(2).

Carr recently described Twitter's moderation policy, "free speech for me, but not for thee." [80] Further, if interactive computer services' contractual representations about their own services cannot be enforced, interactive computer services cannot distinguish themselves. Consumers will not believe, nor should they believe, representations about online services. Thus, no service can credibly claim to offer different services, further strengthening entry barriers and exacerbating competition concerns.

Much of this overly expansive reading of section 230 rests on a selective focus on certain language from Zeran, a case from the United States of Appeals for the Fourth Circuit.[81] The line of court decisions expanding section 230 in such extravagant ways relies on Zeran's reference to: "lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred."[82] This language arguably provides full and complete immunity to the platforms for their own publications, editorial decisions, content-moderating, and affixing of warning or fact-checking statements.[83] But, it is an erroneous interpretation, plucked from its surrounding context and thus removed from its more accurate meaning.

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[80] News Break, Brendan Carr Decries Twitter Censorship as 'Free Speech for Me, but Not for Thee, June 11, 2020, https://www.newsbreak.com/news/1582183608723/brendan-carr-decries-twitter-censorship-as-free-speech-for-me-but-not-for-thee.

[81] Zeran, 129 F.3d at 327.

[82] Zeran, 129 F.3d at 330.

[83] These lines from Zeran have led some courts to adopt the so-called three part section 230(c)(1) test: (1) whether Defendant is a provider of an interactive computer service; (2) if the postings at issue are information provided by another information content provider; and (3) whether Plaintiff's claims seek to treat Defendant as a publisher or speaker of third party content. Okeke v. Cars.com, 966 N.Y.S.2d 843, 846 (Civ. Ct. 2013), citing Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 564 F. Supp. 2d 544, 548 (E.D. Va. 2008), aff'd, 591 F.3d 250 (4th Cir. 2009). As the text explains, this so-called test errs in the third prong. The question is not whether the claim treats defendant as a publisher or speaker—after all, virtually every legal claim (contract, fraud, civil rights violations) would do so. The question is whether liability is

In fact, the quotation refers to third party's exercise of traditional editorial function—not those of the platforms. As the sentence in Zeran that is immediately prior shows, section 230 "creates a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service." In other words, the liability from which section 230(c)(1) protects platforms is that arising from the content that the third-party posts—i.e. the "information" posted by "another information provider" and those information providers' editorial judgments.

In light of the history of publisher and distributor liability law upon which section 230 draws, as well as its actual text, the best way to interpret the distinction between section 230(c)(1) and (c)(2) is as follows: Section 230(c)(1) applies to acts of omission—to a platform's failure to remove certain content. In contrast, section 230(c)(2) applies to acts of commission—a platform's decisions to remove. Section 230(c)(1) does not give complete immunity to all a platform's "editorial judgments."

E. Need for FCC Regulations: Ambiguities in Section 230

Section 230 contains a number of ambiguities that courts have interpreted broadly in ways that are harmful to American consumers, free speech, and the original objective of the statute. First, as discussed below, uncertainty about the interplay between section 230(c)(1) and (c)(2) has led many courts to a construction of the two provisions that other courts consider to be anomalous or lead to rendering section 230(c)(2) superfluous. Second, the interplay between section 230(c)(1) and (c)(2) does not make clear at what point a platform's moderation and presentation of content becomes so pervasive that it becomes an information content provider

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based on the content of third-party information. Requiring platforms to monitor the content of thousands of posts was the impetus behind section 230.

and, therefore, outside of section 230(c)(1)'s protections. Third, critical phrases in section 230(c)(2)— the "otherwise objectionable" material that interactive computer service providers may block without civil liability; and the "good faith" precondition for activating that immunity—are ambiguous on their face. And, with respect to the former, courts have posited starkly divergent interpretations that can only create uncertainty for consumers and market participants. Finally, what it means to be an "information content provider" or to be "treated as a publisher or speaker" is not clear in light of today's new technology and business practices. The Commission's expertise makes it well equipped to address and remedy section 230's ambiguities and provider greater clarity for courts, platforms, and users.

1. The Interaction Between Subparagraphs (c)(1) and (c)(2)

Ambiguity in the relationship between subparagraphs (c)(1) and (c)(2) has resulted in courts reading section 230(c)(1) in an expansive way that risks rendering (c)(2) a nullity. Numerous district court cases have held that section 230(c)(1) applies to removals of content, not section 230(b)(2) with its exacting "good faith" standard."[84] For instance, in Domen v. Vimeo, a federal district court upheld the removal of videos posted by a religious groups' questioning a California law's prohibition on so-called sexual orientation change efforts (SOCE), and the law's effect on pastoral counseling. Finding the videos were "harassing," the court upheld their removal under both section 230(c)(1) and section (c)(2), ruling that these sections are co-extensive, rather than aimed at very different issues.[85] In doing so, the court rendered section

[84] Domen v. Vimeo, Inc., 433 F. Supp. 3d 592, 601 (S.D.N.Y. 2020); Lancaster v. Alphabet, Inc., 2016 WL 3648608 (N.D. Cal. July 28, 2016); Sikhs for Justice "SFJ", Inc., 144 F.Supp.3d 1088.
[85] Domen, 433 F. Supp. 3d at 601 ("the Court finds that Vimeo is entitled to immunity under either (c)(1) or (c)(2)").

230(c)(2) superfluous—reading its regulation of content removal as completely covered by section 230(c)(1)'s regulation of liability for user-generated third party content.

The Commission should promulgate a regulation to clarify the relationship between the two provisions so that section 230(c)(1) does not render section 230(c)(1) superfluous. To determine how these subparagraphs interact—or as E.O. 13925 specifically instructs: "to clarify and determine the circumstances under which a provider of an interactive computer service that restricts access to content in a manner not specifically protected by subparagraph (c)(2)(A) may also not be able to claim protection under subparagraph (c)(1),"[86] the FCC should determine whether the two subsections' scope is additive or not. While some courts have read section 230(c)(1) "broadly,"[87] few have provided any principled distinction between the two subsections.

NTIA urges the FCC to follow the canon against surplusage in any proposed rule.[88] Explaining this canon, the Supreme Court holds, "[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . . ."[89] The Court emphasizes that the canon "is strongest when an interpretation would render superfluous another part of the same statutory scheme."[90]

While some district courts, such as Domen discussed above, have ruled that section 230(c)(1) applies to content removal, which is section 230(c)(2)'s proper domain, those courts

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[86] E.O. 13925 § 2(b)(i).
[87] See Force, 934 F.3d at 64.
[88] Marx v. General Revenue Corp., 568 U.S. 371, 385 (2013).
[89] Corley v. United States, 556 U.S. 303, 314 (2009), quoting Hibbs v. Winn, 542 U.S. 88, 101 (2004).
[90] Marx, 568 U.S. at 386; see also Fair Hous. Council, 521 F.3d 1157 at 1167-68 (avoiding superfluity in interpret the "developer" exception in Section 230(f)(3) of the CDA).

that have explicitly inquired into the proper relationship between the two subparagraphs have followed the surplusage canon—ruling that the provisions cover separate issues[91] and "address different concerns."[92] "Section 230(c)(1) is concerned with liability arising from information provided online," while "[s]ection 230(c)(2) is directed at actions taken by Internet service providers or users to restrict access to online information."[93] Thus, "[s]ection 230(c)(1) provides immunity from claims by those offended by an online publication, while section 230(c)(2) protects against claims by those who might object to the restriction of access to an online publication."[94] Courts have refused to "interpret[] the CDA . . . [to allow] the general immunity in (c)(1) [to] swallow[] the more specific immunity in (c)(2)" because subsection (c)(2) immunizes only an interactive computer service's "actions taken in good faith."[95]

NTIA suggests that the FCC can clarify this relationship between section 230(c)(1) and section 230(c)(2) by establishing the following points. First, the FCC should make clear that section 230(c)(1) applies to liability directly stemming from the information provided by third-party users. Section 230(c)(1) does not immunize a platforms' own speech, its own editorial decisions or comments, or its decisions to restrict access to content or its bar user from a platform. Second, section 230(c)(2) covers decisions to restrict content or remove users.

NTIA, therefore, requests that the Federal Communications Commission add the below Subpart E to 47 CFR Chapter I:

> **Subpart E. Interpreting Subsection 230(c)(1) and Its Interaction With Subsection 230(c)(2).**

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[91] See, e.g., Zango, 568 F.3d at 1175 (holding that (c)(2) is a "different . . . statutory provision with a different aim" than (c)(1)).
[92] Barrett, 40 Cal. 4th 33.
[93] Id. at 49 (emphasis added).
[94] Id. (emphasis added).
[95] e-ventures Worldwide, LLC v. Google, Inc., (M.D. Fla. Feb. 8, 2017) 2017 U.S. Dist. LEXIS 88650, at *9.

§ 130.01
As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

(a) 47 U.S.C. 230(c)(1) applies to an interactive computer service for claims arising from failure to remove information provided by another information content provider. Section 230(c)(1) has no application to any interactive computer service's decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service. Any applicable immunity for matters described in the immediately preceding sentence shall be provided solely by 47 U.S.C. § 230(c)(2).

(b) An interactive computer service is not a publisher or speaker of information provided by another information content provider solely on account of actions voluntarily taken in good faith to restrict access to or availability of specific material in accordance with subsection (c)(2)(A) or consistent with its terms of service or use.

2. The Meaning of Section 230(c)(2)

Section 230(c)(2)'s ambiguities include (1) how to interpret "otherwise objectionable" and (2) "good faith."

a. "Otherwise objectionable"

If "otherwise objectionable" means any material that any platform "considers" objectionable, then section 230(b)(2) offers de facto immunity to all decisions to censor content. And some district courts have so construed section 230(c)(2).[96] But, many courts recognize

[96] Domen v. Vimeo, Inc., 2020 U.S. Dist. L 7935 (S.D.N.Y. Jan. 15, 2020), appeal filed No 20-616 (Feb. 18, 2020) ("Section 230(c)(2) is focused upon the provider's subjective intent of what is 'obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable.' That section 'does not require that the material actually be objectionable; rather, it affords protection for blocking material "that the provider or user considers to be' objectionable."'); Langdon v. Google, Inc., 474 F. Supp. 2d 622, 631 (D. Del. 2007) ("Plaintiff argues there was no refusal to run his ads on the basis they were obscene or harassing, and that Defendants cannot create 'purported reasons for not running his ads.' He omits, however, reference to that portion of § 230 which provides immunity from suit for restricting material that is 'otherwise objectionable.'").

limiting principles. Many look to the statutory canon of ejusdem generis, which holds that catch-all phases at the end of a statutory lists should be construed in light of the other phrases.[97] In this light, section 230(c)(2) only applies to obscene, violent, or other disturbing matters.[98]

Understanding how the section 230(c)(2) litany of terms has proved difficult for courts in determining how spam filtering and filtering for various types of malware fits into the statutory framework. Most courts have ruled that "restrict[ing] access" to spam falls within the section

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[97] Washington State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler, 537 U.S. 371, 372 (2003) ("under the established interpretative canons of noscitur a sociis and ejusdem generis, where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar to those enumerated by the specific words").

[98] Darnaa, LLC v. Google, Inc., 2016 WL 6540452 at *8 (N.D. Cal. 2016) ("The context of § 230(c)(2) appears to limit the term to that which the provider or user considers sexually offensive, violent, or harassing in content."); Song Fi, Inc. v. Google, Inc., 108 F. Supp. 3d 876, 883 (N.D. Cal. 2015) ("First, when a statute provides a list of examples followed by a catchall term (or 'residual clause') like 'otherwise objectionable,' the preceding list provides a clue as to what the drafters intended the catchall provision to mean," citing Circuit City Stores v. Adams, 532 U.S. 105, 115 (2001)). This is the rationale for the canon of construction known as eiusdem generis (often misspelled ejusdem generis), which is Latin for 'of the same kind); National Numismatic v. eBay, 2008 U.S. Dist. LEXIS 109793, at *25 (M.D. Fla. Jul. 8, 2008) ("Section 230 is captioned 'Protection for 'Good Samaritan' blocking and screening of offensive material,' yet another indication that Congress was focused on potentially offensive materials, not simply any materials undesirable to a content provider or user"); Sherman v. Yahoo! Inc., 997 F. Supp. 2d 1129 (S.D. Cal. 2014) (text messages allegedly violate Telephone Consumer Protection Act; Yahoo! raised section 230(c)(2)(B) as a defense) ("The Court declines to broadly interpret 'otherwise objectionable' material to include any or all information or content. The Ninth Circuit has expressed caution at adopting an expansive interpretation of this provision where providers of blocking software 'might abuse th[e CDA] immunity to block content for anticompetitive purposes or merely at its malicious whim, under the cover of considering such material "otherwise objectionable" under § 230(c)(2)."); Goddard v. Google, Inc., 2008 U.S. Dist. LEXIS 101890 (N.D. Cal. Dec. 17, 2008) ('[i]t is difficult to accept . . . that Congress intended the general term "objectionable" to encompass an auction of potentially-counterfeit coins when the word is preceded by seven other words that describe pornography, graphic violence, obscenity, and harassment.' In the instant case, the relevant portions of Google's Content Policy require that MSSPs provide pricing and cancellation information regarding their services. These requirements relate to business norms of fair play and transparency and are beyond the scope of § 230(c)(2).").

230(c)(2) framework, although that is difficult perhaps to see as a textual matter.[99] Spam, though irritating and destructive of the online experience, does not fit clearly into the litany in section 230, at least as courts have understood this litany.

The spam cases have prompted courts to examine the thread that runs through the list in section 230. A recent Ninth Circuit case perceptively sees the challenge: On one hand, "decisions recognizing limitations in the scope of immunity [are] persuasive,"[100] and "interpreting the statute to give providers unbridled discretion to block online content would . . . enable and potentially motivate internet-service providers to act for their own, and not the public, benefit."[101] In addition, the court did recognize that "the specific categories listed in § 230(c)(2) vary greatly: [m]aterial that is lewd or lascivious is not necessarily similar to material that is violent, or material that is harassing. If the enumerated categories are not similar, they provide little or no assistance in interpreting the more general category. We have previously recognized this concept."[102]

Yet, in fact, the original purpose of the Communications Decency Act—"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

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[99] Asurvio LP v. Malwarebytes Inc., 2020 U.S. Dist. LEXIS 53906 (N.D. Cal. Mar. 26, 2020) (allegation that M is wrongfully classifying A's software as malware); 4PC Drivers Headquarters, LP v. Malwarebytes Inc., 371 F. Supp. 3d 652 (N.D. Cal. 2019) (malware); Shulman v. FACEBOOK.com, 2018 U.S. Dist. LEXIS 113076 (D.D.C. Jul. 9, 2018) (spam); Holomaxx Technologies v. Microsoft Corp., 783 F. Supp. 2d 1097 (N.D. Cal. 2011) (spam); Smith v. Trusted Universal Stds. in Elec. Transactions, Inc., 2010 U.S. Dist. LEXIS 43360 (D. N.J. May 4, 2010) (deletion of spam); e360insight v. Comcast Corp., 546 F. Supp. 2d 605 (N.D. Ill. 2008) (spam); Zango v. Kapersky Lab., 568 F.3d 1169 (9th Cir. 2009) (competitive blocking software).

[100] Enigma Software Grp. USA, v. Malwarebytes, Inc., 946 F.3d 1040, 1050 (9th Cir. 2019).

[101] Id.

[102] Id. at 1051.

material"[103]—suggests that the thread that combines section 230(c)(2)'s concepts are those materials that were objectionable in 1996 and for which there was already regulation—regulation which Congress intended section 230 to provide incentives for free markets to emulate.

The first four adjectives in subsection (c)(2), "obscene, lewd, lascivious, filthy," are found in the Comstock Act as amended in 1909.[104] The Comstock Act prohibited the mailing of "every obscene, lewd, or lascivious, and every filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character."[105] In addition, the CDA used the terms "obscene or indecent," prohibiting the transmission of "obscene or indecent message."[106] The Act's second provision declared unconstitutional in Reno v. ACLU, section 223(d), prohibits the knowing sending or displaying of "any comment, request, suggestion, proposal, image, or other communication that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs, regardless of whether the user of such service placed the call or initiated the communication."[107] This language of "patently offensive . . ." derives from the definition of indecent speech set forth in the Pacifica decision and which the FCC continues to regulate to this day.[108]

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[103] 47 U.S.C. § 230(a)(4).
[104] Section 3893 of the Revised Statutes made by section 211 of the Criminal Code, Act of March 4, 1909, c. 321, 35 Stat. 1088, 1129; United States v. Limehouse, 285 U.S. 424, 425 (1932) (stating that "Section 211 of the Criminal Code (18 USCA § 334) declares unmailable 'every obscene, lewd, or lascivious, and every filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character") (additional citation added). The phrase is repeated in numerous state statutes.
[105] Id. at 424-6.
[106] 47 U.S. § 223(a) (May 1996 Supp.).
[107] 521 U.S. 844 (1997).
[108] FCC v. Pacifica Found., 438 U.S. 726, 732 (1978) ("patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs").

The next two terms in the list "excessively violent" and "harassing" also refer to typical concerns of communications regulation which were, in fact, stated concerns of the CDA itself. Congress and the FCC have long been concerned about the effect of violent television shows, particularly upon children; indeed, concern about violence in media was an impetus of the passage of the Telecommunications Act of 1996, of which the CDA is a part. Section 551 of the Act, entitled Parental Choice in Television Programming, requires televisions over a certain size to contain a device, later known at the V-chip. This device allows viewers to block programming according to an established rating system.[109] The legislation led to ratings for broadcast television that consisted of violent programming.[110] The FCC then used this authority to require televisions to allow blocking technology.[111]

And, of course, Congress and the FCC have long regulated harassing wire communications. Section 223, Title 47, the provision which the CDA amended and into which the CDA was in part codified, is a statute that prohibits the making of "obscene or harassing"

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[109] 47 U.S.C. § 303(x). See Technology Requirements to Enable Blocking of Video Programming Based on Program Ratings, 63 Fed. Reg. 20, 131 (Apr. 23, 1998) ("[T]he Commission is amending the rules to require . . . technological features to allow parents to block the display of violent , sexual, or other programming they believe is harmful to their children. These features are commonly referred to as 'v-chip' technology."). Finding that "[t]here is a compelling governmental interest in empowering parents to limit the negative influences of video programming that is harmful to children," Congress sought to "provid[e] parents with timely information about the nature of upcoming video programming and with the technological tools" to block undesirable programming by passing the Telecommunications Act of 1996 (the "Telecommunications Act").

[110] FCC News, Commission Finds Industry Video Programming Rating System Acceptable, Report No. GN 98-3 (Mar. 12, 1998), available at https://transition.fcc.gov/Bureaus/Cable/News_Releases/1998/nrcb8003.html.

[111] Amy Fitzgerald Ryan, Don't Touch That V-Chip: A Constitutional Defense of the Television Program Rating Provisions of the Telecommunications Act of 1996, 87 Geo. L.J. 823, 825 (1999), citing Lawrie Mifflin, TV Networks Plan Ratings System, Orange County Reg., Feb. 15, 1996, at A1.

telecommunications.[112] These harassing calls include "mak[ing] or caus[ing] the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number" or "mak[ing] repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication."[113] Roughly half of the States also outlaw "harassing" wire communications via telephone.[114] Congress enacted the Telephone Consumer Protection Act (TCPA), recently upheld in most part by the Supreme Court,[115] to ban "automated or prerecorded telephone calls, regardless of the content or the initiator of the message," that are considered "to be a nuisance and an invasion of privacy."[116]

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[112] 47 U.S.C. § 223.

[113] 47 U.S.C. § 223(a)(1)(D) & (E) (2012).

[114] See, e.g., (Arizona) Ariz. Rev. Stat. § 13-2916 ("It is unlawful for any person, with intent to terrify, intimidate, threaten or harass a specific person or persons, to do any of the following: 3. Otherwise disturb by repeated anonymous, unwanted or unsolicited electronic communications the peace, quiet or right of privacy of the person at the place where the communications were received."); (California) Cal. Pen. Code § 653m(b) ("Every person who, with intent to annoy or harass, makes repeated telephone calls or makes repeated contact by means of an electronic communication device, or makes any combination of calls or contact, to another person is, whether or not conversation ensues from making the telephone call or contact by means of an electronic communication device, guilty of a misdemeanor. Nothing in this subdivision shall apply to telephone calls or electronic contacts made in good faith or during the ordinary course and scope of business."); (Maryland) Md. Code Ann., Crim. Law § 3-804 ("A person may not use telephone facilities or equipment to make: (1) an anonymous call that is reasonably expected to annoy, abuse, torment, harass, or embarrass another; (2) repeated calls with the intent to annoy, abuse, torment, harass, or embarrass another"); (Oklahoma) 21 Okl. St. § 1172 ("It shall be unlawful for a person who, by means of a telecommunication or other electronic communication device, willfully either: 6. In conspiracy or concerted action with other persons, makes repeated calls or electronic communications or simultaneous calls or electronic communications solely to harass any person at the called number(s)").

[115] Barr v. Am. Ass'n of Political Consultants, 140 S. Ct. 2335 (2020) (upholding the Act except for its debt-collection exception).

[116] Telephone Consumer Protection Act of 1991, 105 Stat. 2394, 2395, codified at 15 U.S.C. § 6101.

Thus, the cases that struggled over how to fit spam into the list of section 230(c)(2) could simply have analogized spam as similar to harassing or nuisance phone calls.

The regulatory meanings, as understood in 1996 and used in the Communications Decency Act, itself, constitute the thread that unites the meanings of "obscene, lewd, lascivious, filthy, excessively violent, and harassing." All deal with issues involving media and communications content regulation intended to create safe, family environments. Compelling that conclusion is "the presumption of consistent usage—the rule of thumb that a term generally means the same thing each time it is used . . . [particularly for] terms appearing in the same enactment."[117] To ensure clear and consistent interpretations of the terms used in subsection 230(c)(2), NTIA requests, therefore, that the FCC add the below Subpart E to 47 CFR Chapter I:

> **Subpart E. Clarifying Subsection 230(c)(2).**
> § 130.02
> As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:
>
> **(a) "obscene," "lewd," "lascivious," and "filthy"**
> The terms "obscene," "lewd," "lascivious," and "filthy" mean material that:
> i. taken as a whole, appeals to the prurient interest in sex or portrays sexual conduct in a patently offensive way, and which, taken as a whole, does not have serious literary, artistic, political, or scientific value;
> ii. depicts or describes sexual or excretory organs or activities in terms patently offensive as measured by contemporary community standards; to the average person, applying contemporary community standards; or
> iii. signifies the form of immorality which has relation to sexual impurity, and have the same meaning as is given them at common law in prosecutions for obscene libel.
>
> **(b) "excessively violent"**
> The term "excessively violent" means material that:
> i. is likely to be deemed violent and for mature audiences according the Federal Communications Commission's V-chip regulatory regime and TV Parental Guidance, promulgated pursuant to Section 551 of the 1996

[117] United States v. Castleman, 572 U.S. 157, 174 (2014), citing IBP, Inc. v. Alvarez, 546 U.S. 21, 33–34 (2005) (Scalia, J., conc.).

Telecommunications Act, Pub. L. No. 104-104, § 551, 110 Stat. 139-42 (codified at 47 U.S.C. § 303; § 330(c)(4)); or

ii. constitutes or intends to advocate domestic terrorism or international terrorism, each as defined in 18 U.S.C. § 2331 ("terrorism").

(c) "harassing"

The term "harassing" means any material that:

i. that sent by an information content provider that has the subjective intent to abuse, threaten, or harass any specific person and is lacking in any serious literary, artistic, political, or scientific value;

ii. regulated by the CAN-SPAM Act of 2003, 117 Stat. 2699; or

iii. that is malicious computer code intended (whether or not by the immediate disseminator) to damage or interfere with the operation of a computer.

(d) "otherwise objectionable"

The term "otherwise objectionable" means any material that is similar in type to obscene, lewd, lascivious, filthy, excessively violent, or harassing materials.

b. "Good faith"

The phrase "good faith" in section 230(c) is also ambiguous. On one hand, most courts, in interpreting the phrase, have looked to pretext, dishonesty, or refusing to explain wrongful behavior when finding good faith or lack thereof in the removal of content. As the United States Court of Appeals for the Ninth Circuit explains, "unless § 230(c)(2)(B) imposes some good faith limitation on what a blocking software provider can consider 'otherwise objectionable' . . . immunity might stretch to cover conduct Congress very likely did not intend to immunize." Under the generous coverage of section 230(c)(2)(B)'s immunity language, a blocking software provider might abuse that immunity to block content for anticompetitive purposes or merely at its malicious whim, under the cover of considering such material "otherwise objectionable."[118] At the same time, some courts, focusing the words "the provider or user considers to be

[118] Zango, 568 F.3d at 1178 (Fisher, J., concurring). The Ninth Circuit has adopted Judge Fisher's reasoning. See Enigma, 946 F.3d at 1049.

obscene," see the provision's immunity available whenever an interactive computer service simply claims to consider the material as fitting within the provision's categories. Thus, "good faith" simply means the existence of some "subjective intent."[119]

Good faith requires transparency about content moderation disputes processes. In order to qualify for section 230(c)(2)'s immunity, a social media platform, or any interactive computer service, must demonstrate in a transparent way that when it takes action pursuant to section 230(c)(2), it provides adequate notice, reasoned explanation, or a meaningful opportunity to be heard."[120]

To ensure clear and consistent interpretation of the "good faith" standard, NTIA requests that the FCC further add the below to newly requested 47 CFR Chapter I Subchapter E Section 130.02:

> **(e) "good faith"**
> A platform restricts access to or availability of specific material (including, without limitation, its scope or reach) by itself, any agent, or any unrelated party in "good faith" under 47 U.S.C. § (c)(2)(A) if it:
>
> i. restricts access to or availability of material or bars or refuses service to any person consistent with publicly available terms of service or use that state plainly and with particularity the criteria the interactive computer service employs in its content-moderation practices, including by any partially or fully automated processes, and that are in effect on the date such content is first posted;
> ii. has an objectively reasonable belief that the material falls within one of the listed categories set forth in 47 U.S.C. § 230(c)(2)(A);
> iii. does not restrict access to or availability of material on deceptive or pretextual grounds, and does not apply its terms of service or use to restrict access to or availability of material that is similarly situated to material that the interactive computer service intentionally declines to restrict; and
> iv. supplies the interactive computer service of the material with timely notice describing with particularity the interactive computer service's reasonable factual basis for the restriction of access and a meaningful opportunity to respond, unless the interactive computer service has an objectively

[119] Domen, 433 F.Supp. 3d 592.
[120] E.O. 13925, Sec. 2(b).

reasonable belief that the content is related to criminal activity or such notice would risk imminent physical harm to others.

3. Section 230(c)(1) and 230(f)(3)

Section 230(c)(1) places "information content providers," i.e., entities that create and post content, outside its protections. This means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the internet, does not receive the statute's shield. Numerous cases have found that interactive computer service's designs and policies render it an internet content provider, outside of section 230(c)(1)'s protection. But the point at which a platform's form and policies are so intertwined with users' postings so as to render the platform an "information content provider" is not clear.

Courts have proposed numerous interpretations, most influentially in the Ninth Circuit in Fair Housing Council of San Fernando Valley v. Roommates.Com.[121] There, the court found that "[b]y requiring subscribers to provide the information as a condition of accessing its service, and by providing a limited set of pre-populated answers, Roommate becomes much more than a passive transmitter of information."[122] The court continued, "[w]e interpret the term 'development' as referring not merely to augmenting the content generally, but to materially contributing to its alleged unlawfulness. In other words, a website helps to develop unlawful content, and thus falls within the exception to section 230, if it contributes materially to the alleged illegality of the conduct."[123] But, this definition has failed to provide clear guidance, with courts struggling to define "material contribution."[124]

[121] Fair Hous. Council, 521 F.3d at 1166.
[122] Id.
[123] Id. at 1167–68 (emphasis added); see also Dirty World Entertainment, 755 F.3d at 411.
[124] See, e.g., People v. Bollaert, 248 Cal. App. 4th 699, 717 (2016).

Further, not all courts accept the material contribution standard. The Seventh Circuit concludes that "[a] company can, however, be liable for creating and posting, inducing another to post, or otherwise actively participating in the posting of a defamatory statement in a forum that that company maintains."[125] Other circuits conclude that a website becomes an information content provider by "solicit[ing] requests" for the information and then "pa[ying] researchers to obtain it."[126]

This confusion stems from the difference between the way an online bulletin board worked in the 1990s, which simply posted content, and how social media works today. As Federal Trade Commissioner Rohit Chopra explained, new social media shape and control information and online experience often as an expression of platforms' and their advertisers' goals rather than their users':

> "[Section 230] seeks to foster an environment where information and ideas can flourish. If a company is just helping move information from point A to point B, that company is just like the mail carrier or the telegraph company. That makes sense . . . . But the tech market has dramatically shifted in the decades since this law was enacted . . . . I would argue that once platforms started prioritizing their paid predictions, the content became more a reflection of advertisers targeting users, than users' own preferences."[127]

In light of modern technology, the FCC should clarify the circumstances under which an interactive computer service becomes an information content provider. Interactive computer services that editorialize particular user comments by adding special responses or warnings appear to develop and create content in any normal use of the words. Analogously, district

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[125] Huon v. Denton, 841 F.3d 733, 742 (7th Cir. 2016).
[126] FTC v. Accusearch Inc., 570 F.3d 1187, 1199–1200 (10th Cir. 2009).
[127] Rohit Chopra, Tech Platforms, Content Creators, and Immunity, American Bar Association, Section of Antitrust Law Annual Spring Meeting, Washington, D.C. (Mar. 28, 2019) (transcript available online at https://www.ftc.gov/system/files/documents/public_statements/1510713/chopra_-_aba_spring_meeting_3-28-19_0.pdf (last visited June 15, 2020)).

courts have concluded that when interactive computer services' "employees . . . authored comments," the interactive computer services would become content providers.[128] In addition, prioritization of content under a variety of techniques, particularly when it appears to reflect a particularly viewpoint, might render an entire platform a vehicle for expression and thus an information content provider.

To clarify when interactive computer services become information content providers through developing and creating content through the presentation of user-provided material, NTIA requests that the FCC add the below Subpart E to 47 CFR Chapter I:

> **Subpart E. Clarifying Subsection 230(f)(2).**
> § 130.03
> As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:
>
> For purposes of 47 U.S.C. § 230(f)(3), "responsible, in whole or in part, for the creation or development of information" includes substantively contributing to, modifying, altering, presenting or prioritizing with a reasonably discernible viewpoint, commenting upon, or editorializing about content provided by another information content provider.

4. "Treated as a Publisher or Speaker"

Finally, the ambiguous term "treated as a publisher or speaker" is a fundamental question for interpreting that courts in general have not addressed squarely. One of the animating concerns for section 230 was court decisions holding online platforms liable as publishers for third-party speech, when in fact they were merely passive bulletin boards. By prohibiting an interactive computer service from being "treated" as a publisher or speaker, therefore, section 230 could be interpreted as not converting non-publisher platforms into publishers simply because they passively transmit third-party content. That does not, however, mean that the

[128] Huon, 841 F.3d at 742.

statute meant to immunize online platforms when they actually act as publishers and exert significant control over the third-party speech and the message it conveys.

FCC Chairman Pai made a similar point by asking if selective content moderation based on ideology eventually becomes "editorial judgment":

> Are these tech giants running impartial digital platforms over which they don't exercise editorial judgment when it comes to content? Or do they in fact decide what speech is allowed and what is not and discriminate based on ideology and/or political affiliation? [129]

If content-moderating can never, no matter how extreme or arbitrary, become editorializing that no longer remains the "speech of another," then section 230(c)(1) will subsume section 230(c)(2) and eliminate liability for all interactive computer services' decisions to restrict content. Interpreting "speaker or publisher" so broadly is especially harmful when platforms are opaque and deceptive in their content-monitoring policies.

This concern is hardly theoretical, given the highly inconsistent, baffling, and even ideologically driven content moderating decisions that the large interactive computer services have made, at least according to numerous accounts. For instance, one interactive computer service made the editorial decision to exclude legal content pertaining to firearms,[130] content that was deemed acceptable for broadcast television,[131] thereby chilling the speech of a political candidate supportive of gun rights. Another interactive computer service has suppressed the

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[129] Ajit Pai, What I Hope to Learn from the Tech Giants, FCC Blog (Sept. 4, 2018), https://www.fcc.gov/news-events/blog/2018/09/04/what-i-hope-learn-tech-giants.
[130] Facebook, Inc., Facebook Prohibited Content: 7. Weapons, Ammunition, or Explosives, https://www.facebook.com/policies/ads/prohibited_content/weapons (last visited June 15, 2020).
[131] Maria Schultz, Facebook pulls ad from gun-toting Georgia candidate taking on Antifa: 'Big Tech censorship of conservatives must end', Fox News (June 6, 2020), https://www.foxnews.com/politics/facebook-pulls-ad-from-gun-toting-georgia-candidate-big-tech-censorship-of-conservatives-must-end.

speech of an American politician for "glorifying violence"[132] while permitting that of a foreign politician glorifying violence to pass without action,[133] as publicly noted by the FCC Chairman.[134] Still another interactive computer service, purporting to be a document repository and editing service,[135] deleted a controversial paper about a potential therapy for COVID-19,[136] stating simply that it was in violation of the site terms of service.[137] A major food-workers' union has objected to social media-implemented internal communication networks for companies, or "intranets," implementing automated censorship to prevent discussions of unionization.[138]

At common law, as a general matter, one is liable for defamation only if one makes "an affirmative act of publication to a third party."[139] This "affirmative act requirement" ordinarily

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[132] Alex Hern, Twitter hides Donald Trump tweet for 'glorifying violence', The Guardian (May 29, 2020), https://www.theguardian.com/technology/2020/may/29/twitter-hides-donald-trump-tweet-glorifying-violence.
[133] White House official Twitter account (May 29, 2020), https://twitter.com/WhiteHouse/status/1266367168603721728.
[134] Ajit Pai verified Twitter account (May 29, 2020), https://twitter.com/AjitPaiFCC/status/1266368492258816002.
[135] Google, Inc., Google Docs "About" page, https://www.google.com/docs/about/ (last visited June 15, 2020) ("Google Docs brings your documents to life with smart editing and styling tools to help you easily format text and paragraphs. Choose from hundreds of fonts, add links, images, and drawings. All for free . . . . Access, create, and edit your documents wherever you go — from your phone, tablet, or computer — even when there's no connection.").
[136] Thomas R. Broker, et al., An Effective Treatment for Coronavirus (COVID-19), (Mar. 13, 2020), page archived at https://archive.is/BvzkY (last visited June 15, 2020).
[137] Google, Inc., Google Docs result for https://docs.google.com/document/d/e/2PACX-1vTi-g18ftNZUMRAj2SwRPodtscFio7bJ7GdNgbJAGbdfF67WuRJB3ZsidgpidB2eocFHAVjIL-7deJ7/pub (last visited June 15, 2020) ("We're sorry. You can't access this item because it is in violation of our Terms of Service.").
[138] United Food and Commercial Workers International Union, Facebook Censorship of Worker Efforts to Unionize Threatens Push to Strengthen Protections for Essential Workers During COVID-19 Pandemic (June 12, 2020), http://www.ufcw.org/2020/06/12/censorship/.
[139] Benjamin C. Zipursky, Online Defamation, Legal Concepts, and the Good Samaritan, 51 Val. U. L. Rev. 1, 18 (2016) , available at https://scholar.valpo.edu/cgi/viewcontent.cgi?article=2426&context=vulr.

"depict[s] the defendant as part of the initial making or publishing of a statement."[140] The common law also recognized a "narrow exception to the rule that there must be an affirmative act of publishing a statement."[141] A person "while not actually publishing—will be subjected to liability for the reputational injury that is attributable to the defendant's failure to remove a defamatory statement published by another person."[142] Such a duty might apply where a defendant has undertaken an affirmative duty to remove. Stratton Oakmont embodies the latter idea: The court held that Prodigy, having undertaken to moderate some content on its page, thereby assumed an affirmative duty to moderate all content on its site. At common law, then, the publication element of defamation could be satisfied either through the rule—an affirmative act—or the exception—an omission where an affirmative duty applies.

Section 230(c)(1)'s "treated as the publisher or speaker" could plausibly be understood to foreclose liability only if a defendant would satisfy the exception. Satisfying the exception subjects one to defamation liability as if he were the publisher or speaker of the content, although he did not "actually publish[]" the content.[143] He is not a "true publisher" in the sense of satisfying the affirmative act requirement, but he is deemed or regarded as if he were because he had an affirmative duty to moderate.[144] This interpretation of section 230(c)(1) reads it to foreclose the very argument courts may have been on track to embrace after Stratton Oakmont, viz., that a platform has an affirmative duty to remove defamatory content and will be treated as satisfying the publication element of defamation for nonfeasance in the same way as a true publisher. Section 230(c)(1) states—in the face of Stratton Oakmont's contrary holding—a

[140] Id. at 19.
[141] Id. at 20.
[142] Id. at 21 (citing Restatement (Second) of Torts § 577(2) (Am. Law Inst. 1977)).
[143] Zipursky, 51 Val. L. Rev. at 21.
[144] Id. at 45.

general rule: There is no affirmative duty to remove. For that reason, section 230(c)(1) should be construed to concern only failures to remove and not takedowns, and not to apply when a platform "actually publishes" content.

NTIA suggests that the FCC can clarify the ambiguous phrase "speaker or publisher" by establishing that section 230(c)(1) does not immunize the conduct of an interactive service provider that is actually acting as a publisher or speaker in the traditional sense. Two points follow. First, when a platform moderates outside of section 230(c)(2)(A), section 230(c)(1) does not provide an additional, broader immunity that shields content takedowns more generally. Such affirmative acts are outside of the scope of (c)(1). Second, when a platform reviews third-party content already displayed on the internet and affirmatively vouches for it, editorializes, recommends, or promotes such content on the basis of the content's substance or message, the platform receives no section 230(c)(1) immunity. NTIA therefore requests that the FCC further add the below to newly requested Subpart E to 47 CFR Chapter I:

Subpart E. Clarifying Subsection 230(f)(2).

§ 130.04

(c) An interactive computer service is not being "treated as the publisher or speaker of any information provided by another information content provider" when it actually publishes its own or third-party content. Circumstances in which an interactive computer service actually publishes content include when:

(i) it affirmatively solicits or selects to display information or content either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool pursuant to a reasonably discernible viewpoint or message, without having been prompted to, asked to, or searched for by the user; and
(ii) it reviews third-party content already displayed on the Internet and affirmatively vouches for, editorializes, recommends, or promotes such content to other Internet users on the basis of the content's substance or messages. This paragraph applies to a review conducted, and a recommendation made, either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool.

(d) An interactive computer service does not publish content merely by:

(i) providing content in a form or manner that the user chooses, such as non-chronological order, explicit user preferences, or because a default setting of the service provides it, and the interactive computer service fully informs the user of this default and allows its disabling; or

(ii) transmitting, displaying, or otherwise distributing such content, or merely by virtue of moderating third-party content consistent with a good faith application of its terms of service in force at the time content is first posted. Such an interactive computer service may not, by virtue of such conduct, be "treated as a publisher or speaker" of that third-party content. 47 U.S.C. § 230(c)(1).

VI. Title I and Sections 163 and 257 of the Act Permit the FCC to Impose Disclosure Requirements on Information Services

With roots in the Modified Final Judgment for the break-up of AT&T[145] and codified by the Telecommunications Act of 1996,[146] the term "information service" refers to making information available via telecommunications. Under FCC and judicial precedent, social media sites are "information services." As such, courts have long recognized the Commission's power to require disclosure of these services under sections 163 and 257.

A. Social media are information services

Section 230(f)(2) explicitly classifies "interactive computer services" as "information services," as defined in 47 U.S.C. § 153(20).[147] Further, social media fits the FCC's definition of

[145] United States v. Am. Tel. & Tel. Co., 552 F. Supp. 131, 179 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) (observing that "'Information services' are defined in the proposed decree at Section IV(J) as: the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information which may be conveyed via telecommunications").

[146] 47 U.S.C. § 153(24).

[147] Id. ("[T]he offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.").

enhanced services.[148] In Brand X, the Supreme Court explained, "The definitions of the terms 'telecommunications service' and 'information service' established by the 1996 Act are similar to the Computer II basic-and enhanced-service classifications" with "'information service'—the analog to enhanced service."[149]

Numerous courts have ruled that search engines, browsers and internet social media precursors such as chat rooms are information services.[150] Courts have long recognized edge providers as information services under Title I. For example, in Barnes, the U.S. Court of Appeals for the Ninth Circuit classifies Yahoo's social networking services an "information service," interchangeably with "interactive computer service," and in Howard v. Am. Online, the same court designates America Online's messaging facilities "enhanced services."[151]

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[148] 47 CFR § 64.702 ("[S]ervices, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information.").

[149] Nat'l Cable & Telecommunications Ass'n v. Brand X Internet Servs., 545 U.S. 967, 977 (2005).

[150] Mozilla Corp. v. F.C.C., 940 F.3d 1, 34 (D.C. Cir. 2019) ("But quite apart from the fact that the role of ISP-provided browsers and search engines appears very modest compared to that of DNS and caching in ISPs' overall provision of Internet access, Petitioners are in a weak posture to deny that inclusion of 'search engines and web browsers' could support an 'information service' designation . . . since those appear to be examples of the 'walled garden' services that Petitioners hold up as models of 'information service'-eligible offerings in their gloss of Brand X.") (internal citations omitted); FTC v. Am. eVoice, Ltd., 242 F. Supp. 3d 1119 (D. Mont. 2017) (Email and online "chat rooms" "were enhanced services because they utilized transmission lines to function, as opposed to acting as a pipeline for the transfer of information . . . . 'This conclusion is reasonable because e-mail fits the definition of an enhanced service.'" (quoting Howard v. Am. Online Inc., 208 F.3d 741, 746 (9th Cir. 2000)). "Also excluded from coverage are all information services, such as Internet service providers or services such as Prodigy and America-On-Line." H.R. Rep. No. 103-827, at 18 (1994), as reprinted in 1994 U.S.C.C.A.N. 3489, 3498

[151] Barnes, 570 F.3d at 1101.

B. Several statutory sections empower the FCC to mandate disclosure

Beyond having jurisdiction over social media as information services, the FCC has clear statutory authority to impose disclosure requirements under sections 163 and 257 of the Communications Act. Section 163 charges the FCC to "consider all forms of competition, including the effect of intermodal competition, facilities-based competition, and competition from new and emergent communications services, including the provision of content and communications using the Internet" and "assess whether laws, regulations, regulatory practices . . . pose a barrier to competitive entry into the communications marketplace or to the competitive expansion of existing providers of communications services."[152] Section 257(a) of the Communications Act requires the FCC to examine market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services."[153]

In its 2018 Internet Order, the Commission relied on section 257 to impose service transparency requirements on providers of the information service of broadband internet access. It reasoned that doing so would reduce entry barriers.[154] Similar reasoning applies to requiring transparency for social media. Clear, current, readily accessible and understandable descriptions of an interactive computer service provider's content moderation policies would help enterprising content providers fashion their offerings so that they can be provided across multiple

[152] 47 U.S.C. § 163.
[153] 47 U.S.C. § 257(a) (2018). While section 257 was amended and repealed in part, its authority remained intact in section 163. "Congress emphasized that '[n]othing in this title [the amendment to the Telecommunications Act creating section 163] or the amendments made by this title shall be construed to expand or contract the authority of the Commission." Mozilla, 940 F.3d at 47 citing Pub. L. No. 115-141, Div. P, § 403, 132 Stat. at 1090.
[154] Federal Communications Commission, In the Matter of Restoring Internet Freedom, 33 F.C.C. Rcd. 311 (2018).

platforms with reduced costs and friction for the provider and fewer disruptions to user experiences.[155]

Perhaps more important, information about an interactive computer service provider's content moderation policies would help entities design filtering products that could improve the providers' implementation of those policies, or assist consumers in remedying the gaps they may see in the providers' policies. Certainly, empowering consumers with blocking technologies that they choose and control—rather than accepting a platform's top-down centralized decisions, would directly advance section 230's policy of encouraging "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."[156] Increasing transparency about online platforms' content moderation practices would also enable users to make more informed choices about competitive alternatives.

Consumers today have a one-way relationship with social media transparency; platforms know everything about consumers, but consumers know very little about how or why platforms exercise influence or direct control over consumers' speech. Certain information disappears or becomes difficult to find, while other information is promoted and prominently displayed. Inevitably, some consumers and content creators begin to worry that secretive forces within platform providers are manipulating social media for ends that can only be guessed at.[157] Such suspicion is inevitable when there is so little transparency about the process behind the social media visibility of user-provided content, even when policies are applied fairly and no

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[155] See supra Section IV.
[156] 47 U.S.C. § 230(a)(3).
[157] Rod Dreher, Google Blacklists Conservative Websites (July 21, 2020), https://www.theamericanconservative.com/dreher/google-blacklists-conservative-websites/.

wrongdoing has taken place. By increasing transparency to consumers, platforms would ensure that consumers can choose to consume social media whose policies they agree with without fear that manipulations to which they did not consent are happening behind the scenes.

The importance of disclosure to our communications networks cannot be underestimated. Chairman Pai recognizes that democracies must require transparency and to ensure the proper function of essential communications networks.[158] That is why, when eliminating Title II common carrier so-called "network neutrality" regulations, Chairman Pai's FCC retained Title I disclosure requirements for broadband access service providers.

The same is true for other information service providers. Speaking of the social media platforms, FCC Chairman Ajit Pai asked "how do these companies make decisions about what we see and what we don't? And who makes those decisions?"[159] For social media, it is particularly important to ensure that large firms avoid "deceptive or pretextual actions stifling free and open debate by censoring certain viewpoints,"[160] or engage in deceptive or pretextual actions (often contrary to their stated terms of service) to stifle viewpoints with which they disagree."[161]

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[158] Federal Communications Commission, In the Matter of Restoring Internet Freedom, WC Docket No. 17-108, Declaratory Ruling, Report And Order, And Order (Jan, 4, 2018) ¶ 209, available at https://www.fcc.gov/document/fcc-releases-restoring-internet-freedom-order ("'Sunlight,' Justice Brandeis famously noted, 'is . . . the best of disinfectants.' This is the case in our domain. Properly tailored transparency disclosures provide valuable information to the Commission to enable it to meet its statutory obligation to observe the communications marketplace to monitor the introduction of new services and technologies, and to identify and eliminate potential marketplace barriers for the provision of information services. Such disclosures also provide valuable information to other Internet ecosystem participants.").

[159] Ajit Pai, What I Hope to Learn from the Tech Giants (Sept. 4, 2018), https://www.fcc.gov/news-events/blog/2018/09/04/what-i-hope-learn-tech-giants (last visited June 15, 2020).

[160] E.O. 13925, Section 2(a).

[161] Id.

To prevent these ends, NTIA requests that the FCC further add the below to Subpart E to 47 CFR Chapter I Subchapter A Part 8:

§ 8.2 Transparency for Interactive Computer Services.

Any person providing an interactive computer service in a manner through a mass-market retail offering to the public shall publicly disclose accurate information regarding its content-management mechanisms as well as any other content moderation, promotion, and other curation practices of its interactive computer service sufficient to enable (i) consumers to make informed choices regarding the purchase and use of such service and (ii) entrepreneurs and other small businesses to develop, market, and maintain offerings by means of such service. Such disclosure shall be made via a publicly available, easily accessible website or through transmittal to the Commission.

VII. Conclusion

For the foregoing reasons, NTIA respectfully requests that the Commission institute a rulemaking to interpret Section 230 of the Communications Act.

Respectfully submitted,

Douglas Kinkoph

Douglas Kinkoph
Performing the Delegated Duties of the
Assistant Secretary for Commerce for
Communications and Information

July 27, 2020

APPENDIX A: Proposed Rules

47 CFR Chapter I, Subchapter E
Part 130 – Section 230 of the Communications Decency Act.

Interpreting Subsection 230(c)(1) and Its Interaction With Subsection 230(c)(2).
§ 130.01
As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

(a) 47 U.S.C. 230(c)(1) applies to an interactive computer service for claims arising from failure to remove information provided by another information content provider. Section 230(c)(1) has no application to any interactive computer service's decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service. Any applicable immunity for matters described in the immediately preceding sentence shall be provided solely by 47 U.S.C. § 230(c)(2).

(b) An interactive computer service is not a publisher or speaker of information provided by another information content provider solely on account of actions voluntarily taken in good faith to restrict access to or availability of specific material in accordance with subsection (c)(2)(A) or consistent with its terms of service or use.

(c) An interactive computer service is not being "treated as the publisher or speaker of any information provided by another information content provider" when it actually publishes its own or third-party content. Circumstances in which an interactive computer service actually publishes content include when:

(i) it affirmatively solicits or selects to display information or content either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool pursuant to a reasonably discernible viewpoint or message, without having been prompted to, asked to, or searched for by the user;

(ii) it reviews third-party content already displayed on the Internet and affirmatively vouches for, editorializes, recommends, or promotes such content to other Internet users on the basis of the content's substance. This paragraph applies to a review conducted, and a recommendation made, either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool.

(d) An interactive computer service does not publish content merely by:

(1) providing content in a form or manner that the user chooses, such as non-chronological order, explicit user preferences, or because a default

setting of the service provides it, and the interactive computer service fully informs the user of this default and allows its disabling; or
(2) transmitting, displaying, or otherwise distributing such content, or merely by virtue of moderating third-party content consistent with a good faith application of its terms of service in force at the time content is first posted. Such an interactive computer service may not, by virtue of such conduct, be "treated as a publisher or speaker" of that third-party content. 47 U.S.C. § 230(c)(1).

Clarifying Subsection 230(c)(2).
§ 130.02
As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

(a) "obscene," "lewd," lascivious" and "filthy"
The terms "obscene," "lewd," "lascivious," and "filthy" mean material that

iv. taken as a whole, appeals to the prurient interest in sex or portrays sexual conduct in a patently offensive way, and which, taken as a whole, does not have serious literary, artistic, political, or scientific value;
v. depicts or describes sexual or excretory organs or activities in terms patently offensive as measured by contemporary community standards; to the average person, applying contemporary community standards; or
vi. signifies the form of immorality which has relation to sexual impurity, and have the same meaning as is given them at common law in prosecutions for obscene libel.

(b) "excessively violent"
The term "excessively violent" means material that

iii. is likely to be deemed violent and for mature audiences according the Federal Communications Commission's V-chip regulatory regime and TV Parental Guidance, promulgated pursuant to Section 551 of the 1996 Telecommunications Act Pub. L. No. 104-104, § 551, 110 Stat. 139-42 (codified at 47 U.S.C. § 303; § 330(c)(4));
iv. constitutes or intends to advocate domestic terrorism or international terrorism, each as defined in 18 U.S.C. § 2331 ("terrorism").

(c) "harassing"
The term "harassing" means any material that

iv. that sent by an information content provider that has the subjective intent to abuse, threaten, or harass any specific person and is lacking in any serious literary, artistic, political, or scientific value;
v. regulated by the CAN-SPAM Act of 2003, 117 Stat. 2699; or
vi. that is malicious computer code intended (whether or not by the immediate disseminator) to damage or interfere with the operation of a computer.

(d) "otherwise objectionable"
The term "otherwise objectionable" means any material that is similar in type to obscene, lewd, lascivious, filthy, excessively violent, or harassing materials.

(e) "good faith"

A platform restricts access to or availability of specific material (including, without limitation, its scope or reach) by itself, any agent, or any unrelated party in "good faith" under 47 U.S.C. § (c)(2)(A) if it:

v. restricts access to or availability of material or bars or refuses service to any person consistent with publicly available terms of service or use that state plainly and with particularity the criteria the interactive computer service employs in its content-moderation practices, including by any partially or fully automated processes, and that are in effect on the date such content is first posted;

vi. has an objectively reasonable belief that the material falls within one of the listed categories set forth in 47 U.S.C. § 230(c)(2)(A);

vii. does not restrict access to or availability of material on deceptive or pretextual grounds, and does not apply its terms of service or use to restrict access to or availability of material that is similarly situated to material that the interactive computer service intentionally declines to restrict; and

viii. supplies the interactive computer service of the material with timely notice describing with particularity the interactive computer service's reasonable factual basis for the restriction of access and a meaningful opportunity to respond, unless the interactive computer service has an objectively reasonable belief that the content is related to criminal activity or such notice would risk imminent physical harm to others.

Clarifying Subsection 230(f)(2).

§ 130.03

As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

For purposes of 47 U.S.C. § 230(f)(3), "responsible, in whole or in part, for the creation or development of information" includes substantively contributing to, modifying, altering, presenting with a reasonably discernible viewpoint, commenting upon, or editorializing about content provided by another information content provider.

47 CFR Chapter I Subchapter A Part 8 ---Internet Freedom.

§ 8.2 Transparency for Interactive Computer Services.

Any person providing an interactive computer service in a manner through a mass-market retail offering to the public shall publicly disclose accurate information regarding its content-management mechanisms as well as any other content moderation, promotion, and other curation practices of its interactive computer service sufficient to enable (i) consumers to make informed choices regarding the purchase and use of such service and (ii) entrepreneurs and other small businesses to develop, market, and maintain offerings by means of such service. Such disclosure shall be made via a publicly available, easily accessible website or through transmittal to the Commission.

From:	Remaley, Evelyn
To:	Kinkoph, Douglas; Candeub, Adam; May,Timothy; Wasilewski, Jim; Smith, Kathy; Brown, Milton; Harris, Vernita D.; Goldberg, Rafi; Hall, Travis; Sloan, Tim; Zambrano, Luis; Wolbers, Rachel
Subject:	EO Deliverables 6/5/20
Date:	Friday, June 5, 2020 5:01:31 PM
Attachments:	Appendix - Selected Terms of Service.docx EO Petition introductory text v1.2.docx
Importance:	High

Colleagues,

Please find attached the deliverables responsive to requests #5 and #6: a draft appendix of selected terms of service and draft introductory text.

(b) (5) [redacted] We are on track to circulate the issue-spotting with Rachel and Tim with enough time to deliver to the team by COB Monday.

Let us know if you have any questions,

Thanks!
Evelyn

_____

Evelyn L. Remaley
Associate Administrator for Policy Analysis & Development
National Telecommunications & Information Administration
U.S. Department of Commerce
EMAIL: eremaley@ntia.gov
VOICE: 202.482.3821

Selected Terms of Service for Online Platforms

Contents

4Chan
https://www.4chan.org/rules

Global Rules

1. You will not upload, post, discuss, request, or link to anything that violates local or United States law.

2. You will immediately cease and not continue to access the site if you are under the age of 18.

3. You will not post any of the following outside of /b/:

a. Troll posts

b. Racism

c. Anthropomorphic ("furry") pornography

d. Grotesque ("guro") images

e. Loli/shota pornography

f. Dubs or GET posts, including 'Roll for X' images

4. You will not post or request personal information ("dox") or calls to invasion ("raids"). Inciting or participating in cross-board (intra-4chan) raids is also not permitted.

5. All boards on 4channel.org are to be considered "work safe". Violators may be temporarily banned and their posts removed. Note: Spoilered pornography or other "not safe for work" content is NOT allowed.

6. The quality of posts is extremely important to this community. Contributors are encouraged to provide high-quality images and informative comments. Please refrain from posting the following:

. Irrelevant catchphrases or copypasta
Example: "What the fuck did you just fucking say about me, you little bitch?..."

a. Indecipherable text
Example: "lol u tk him 2da bar|?"

b. Irrelevant ASCII macros

c. Ironic shitposting
Example: "upboads for le funy maymay trollolololololoxdxdxdxd~~!"

d. Gibberish text
Example: "l;kjdsfioasoiupwajnasdfa"

7. Submitting false or misclassified reports, or otherwise abusing the reporting system may result in a ban. Replying to a thread stating that you've reported or "saged" it, or another post, is also not allowed.

8. Complaining about 4chan (its policies, moderation, etc) on the imageboards may result in post deletion and a ban.

9. Evading your ban will result in a permanent one. Instead, wait and appeal it!

10. No spamming or flooding of any kind. No intentionally evading spam or post filters.

11. Advertising (all forms) is not welcome—this includes any type of referral linking, "offers", soliciting, begging, stream threads, etc.

12. Impersonating a 4chan administrator, moderator, or janitor is strictly forbidden.

13. Do not use avatars or attach signatures to your posts.

14. The use of scrapers, bots, or other automated posting or downloading scripts is prohibited. Users may also not post from proxies, VPNs, or Tor exit nodes.

15. All pony/brony threads, images, Flashes, and avatars belong on /mlp/.

16. All request threads for adult content belong on /r/, and all request threads for work-safe content belong on /wsr/, unless otherwise noted.

17. Do not upload images containing additional data such as embedded sounds, documents, archives, etc.

Global rules apply to all boards unless otherwise noted.

Remember: The use of 4chan is a privilege, not a right. The 4chan moderation team reserves the right to revoke access and remove content for any reason without notice.

Deviant Art
https://about.deviantart.com/policy/service/

Introduction

Please read these Terms of Service ("Terms") carefully. They contain the legal terms and conditions that govern your use of services provided to you by DeviantArt, including information, text, images, graphics, data or other materials ("Content") and products and services provided through www.DeviantArt.com , shop.deviantart.com , Sta.sh and other DeviantArt mobile applications as well as all elements, software, programs and code forming or incorporated in to www.DeviantArt.com (the "Service"). This Service is operated by DeviantArt, Inc. ("DeviantArt"). DeviantArt is also referred to in these Terms as "we", "our", and "us".

By using our Service, you agree to be bound by Section I of these Terms ("General Terms"), which contains provisions applicable to all users of our Service, including visitors to the DeviantArt website (the "Site"). If you choose to register as a member of our Service or purchase products from the DeviantArt Shop, you will be asked to check a box indicating that you have read, and agree to be bound by, the additional terms set forth in Section II of these Terms ("Additional Terms").

Section I: General Terms

1. Availability

This Service is provided by DeviantArt on an "AS IS" and "AS AVAILABLE" basis and DeviantArt reserves the right to modify, suspend or discontinue the Service, in its sole discretion, at any time and without notice. **You agree that DeviantArt is and will not be liable to you for any modification, suspension or discontinuance of the Service.**

2. Privacy

DeviantArt has a firm commitment to safeguarding your privacy. Please review DeviantArt's Privacy Policy. The terms of DeviantArt's privacy policy are incorporated into, and form a part of, these Terms.

3. Trademarks

All brand, product and service names used in this Service which identify DeviantArt or third parties and their products and services are proprietary marks of DeviantArt and/or the relevant third parties. Nothing in this Service shall be deemed to confer on any person any license or right on the part of DeviantArt or any third party with respect to any such image, logo or name.

4. Copyright

DeviantArt is, unless otherwise stated, the owner of all copyright and data rights in the Service and its contents. Individuals who have posted works to DeviantArt are either the copyright owners of the component parts of that work or are posting the work under license from a copyright owner or his or her agent or otherwise as permitted by law. You may not reproduce, distribute, publicly display or perform, or prepare derivative works based on any of the Content including any such works without the express, written consent of DeviantArt or the appropriate owner of copyright in such works. DeviantArt does not claim ownership rights in your works or other materials posted by you to DeviantArt (Your Content). You agree not to distribute any part of the Service other than Your Content in any medium other than as permitted in these Terms of Service or by use of functions on the Service provided by us. You agree not to alter or modify any part of the Service unless expressly permitted to do so by us or by use of functions on the Service provided by us.

5. Reporting Copyright Violations

DeviantArt respects the intellectual property rights of others and expects users of the Service to do the same. At DeviantArt's discretion and in appropriate circumstances, DeviantArt may remove Your Content submitted to the Site, terminate the accounts of users or prevent access to the Site by users who infringe the intellectual property rights of others. If you believe the copyright in your work

or in the work for which you act as an agent has been infringed through this Service, please contact DeviantArt's agent for notice of claims of copyright infringement, Daniel Sowers who can be reached through violations@deviantart.com. You must provide our agent with substantially the following information, which DeviantArt may then forward to the alleged infringer (see 17 U.S.C. 512 (c)(3) for further details):

a. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

b. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.

c. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.

d. Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.

e. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner.

f. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Please see DeviantArt's Copyright Policy for further information and details.

6. External Links

DeviantArt may provide links to third-party websites or resources. You acknowledge and agree that DeviantArt is not responsible or liable for: the availability or accuracy of such websites or resources; or the Content, products, or services on or available from such websites or resources. Links to such websites or

resources do not imply any endorsement by DeviantArt of such websites or resources or the Content, products, or services available from such websites or resources. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources.

7. Third Party Software

As a convenience, we may make third-party software available through the Service. To use the third-party software, you must agree to the terms and conditions imposed by the third party provider and the agreement to use such software will be solely between you and the third party provider. By downloading third party software, you acknowledge and agree that the software is provided on an "AS IS" basis without warranty of any kind. In no event shall DeviantArt be liable for claims or damages of any nature, whether direct or indirect, arising from or related to any third-party software downloaded through the Service.

8. Conduct

You agree that you shall not interfere with or disrupt (or attempt to interfere with or disrupt) this Service or servers or networks connected to this Service, or to disobey any requirements, procedures, policies or regulations of networks connected to this Service; or provide any information to DeviantArt that is false or misleading, that attempts to hide your identity or that you do not have the right to disclose. DeviantArt does not endorse any content placed on the Service by third parties or any opinions or advice contained in such content. You agree to defend, indemnify, and hold harmless DeviantArt, its officers, directors, employees and agents, from and against any claims, liabilities, damages, losses, and expenses, including, without limitation, reasonable legal and expert fees, arising out of or in any way connected with your access to or use of the Services, or your violation of these Terms.

9. Disclaimer of Warranty and Limitation of Liability

DEVIANTART MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED AS TO THE OPERATION OF THE SERVICE, OR THE CONTENT OR PRODUCTS, PROVIDED THROUGH THE

SERVICE. YOU EXPRESSLY AGREE THAT YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. DEVIANTART DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, TO THE FULLEST EXTENT PERMITTED BY LAW. DEVIANTART MAKES NO WARRANTY AS TO THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THIS SERVICE. YOU SPECIFICALLY ACKNOWLEDGE THAT DEVIANTART IS NOT LIABLE FOR YOUR DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT, OR SUCH CONDUCT BY THIRD PARTIES, AND YOU EXPRESSLY ASSUME ALL RISKS AND RESPONSIBILITY FOR DAMAGES AND LOSSES ARISING FROM SUCH CONDUCT. EXCEPT FOR THE EXPRESS, LIMITED REMEDIES PROVIDED HEREIN, AND TO THE FULLEST EXTENT ALLOWED BY LAW, DEVIANTART SHALL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM USE OF THE SERVICE, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF DEVIANTART HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMERS, WAIVERS AND LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON CERTAIN WARRANTIES OR DAMAGES. THEREFORE, SOME OF THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU. IN NO EVENT SHALL DEVIANTART'S AGGREGATE LIABILITY TO YOU EXCEED THE AMOUNTS PAID BY YOU TO DEVIANTART PURSUANT TO THIS AGREEMENT.

10. Amendment of the Terms

We reserve the right to amend these Terms from time to time in our sole discretion. If you have registered as a member, we shall notify you of any material changes to these Terms (and the effective date of such changes) by sending an email to the address you have provided to DeviantArt for your account. For all other users, we will post the revised terms on the Site. If you continue to use the Service after the effective date of the revised Terms, you will be deemed to have accepted those changes. If you do not agree to the revised Terms, your sole remedy shall be to discontinue using the Service.

11. General

These Terms constitute the entire agreement between DeviantArt and you with respect to your use of the Service. DeviantArt's failure to enforce any right or provision in these Terms shall not constitute a waiver of such right or provision. If a court should find that one or more provisions contained in these Terms is invalid, you agree that the remainder of the Terms shall be enforceable. DeviantArt shall have the right to assign its rights and/or delegate its obligations under these Terms, in whole or in part, to any person or business entity. You may not assign your rights or delegate your obligations under these Terms without the prior written consent of DeviantArt. These Terms shall be governed by and construed in accordance with the laws of the State of California. Any disputes arising under or in connection with these Terms shall be subject to the exclusive jurisdiction of the state and federal courts of the State of California.

12. Comments

If you have any comments or questions about the Service please contact us by email at help@deviantart.com.

Section II: Additional Terms

13. Registration

To register as a member of the Service or purchase products, you must be 13 years or lawfully permitted to enter into and form contracts under applicable law. In no event may minors submit Content to the Service. You agree that the information that you provide to us upon registration, at the time of purchase, and at all other times will be true, accurate, current and complete. You also agree that you will ensure that this information is kept accurate and up to date at all times. This is especially important with respect to your email address, since that is the primary way in which we will communicate with you about your account and your orders.

14. Password

When you register as a member you will be asked to provide a password. You are responsible for safeguarding the password and you agree not to disclose your password to any third party. You agree that you shall be solely responsible for any activities or actions under your password, whether or not you have authorized such activities or actions. You shall immediately notify DeviantArt of any unauthorized use of your password.

15. Submitting Content

Chat Rooms and Forums - As a registered member of the Service, you will be granted the privilege of participating in chat rooms and forums on the DeviantArt website as part of the Service, which means you may post Your Content in the form of text for display in these areas of the DeviantArt website, subject to your compliance with the Terms.

Artist Materials - As a registered member of the Service, you will also be granted the privilege of submitting certain types of Your Content, known as "Artist Materials," for display on your user page. Prior to submitting Artist Materials, you must accept the additional terms and conditions of the Submission Policy, which is incorporated into, and forms a part of, the Terms.

16. Copyright in Your Content

DeviantArt does not claim ownership rights in Your Content. For the sole purpose of enabling us to make your Content available through the Service, you grant to DeviantArt a non-exclusive, royalty-free license to reproduce, distribute, re-format, store, prepare derivative works based on, and publicly display and perform Your Content. **Please note that when you upload Content, third parties will be able to copy, distribute and display your Content using readily available tools on their computers for this purpose although other than by linking to your Content on DeviantArt any use by a third party of your Content could violate paragraph 4 of these Terms and Conditions unless the third party receives permission from you by license.**

17. Monitoring Content

DeviantArt has no ability to control the Content you may upload, post or otherwise transmit using the Service and does not have any obligation to monitor such Content for any purpose. You acknowledge that you are solely responsible for all Content and material you upload, post or otherwise transmit using the Service.

18. Storage Policy

At this time, DeviantArt provides free online storage of Your Content to registered members of the Service. However, you acknowledge and agree that DeviantArt may, at its option, establish limits concerning your use of the Service, including without limitation the maximum number of days that Your Content will be retained by the Service, the maximum size of any Content files that may be stored on the Service, the maximum disk space that will be allotted to you for the storage of Content on DeviantArt's servers. Furthermore, you acknowledge that DeviantArt reserves the right to terminate or suspend accounts that are inactive, in DeviantArt's sole discretion, for an extended period of time (thus deleting or suspending access to your Content). Without limiting the generality of Section 9, DeviantArt shall have no responsibility or liability for the deletion or failure to store any Content maintained on the Service and you are solely responsible for creating back-ups of Your Content. You further acknowledge that DeviantArt reserves the right to modify its storage policies from time to time, with or without notice to you.

19. Conduct

You agree to be subject to and to conduct yourself in accordance with the DeviantArt Etiquette Policy.You are responsible for all of Your Content you upload, download, and otherwise copy, distribute and display using the Service. You must have the legal right to copy, distribute and display all parts of any content that you upload, download and otherwise copy, distribute and display. Content provided to you by others, or made available through websites, magazines, books and other sources, are protected by copyright and should not be uploaded, downloaded, or otherwise copied, distributed or displayed without the consent of

the copyright owner or as otherwise permitted by law. Please refer to DeviantArt's Copyright Policy for further details.

You agree not to use the Service:

a. for any unlawful purposes;

b. to upload, post, or otherwise transmit any material that is obscene, offensive, blasphemous, pornographic, unlawful, threatening, menacing, abusive, harmful, an invasion of privacy or publicity rights, defamatory, libelous, vulgar, illegal or otherwise objectionable;

c. to upload, post, or otherwise transmit any material that infringes any copyright, trade mark, patent or other intellectual property right or any moral right or artist's right of any third party including, but not limited to, DeviantArt or to facilitate the unlawful distribution of copyrighted content or illegal content;

d. to harm minors in any way, including, but not limited to, uploading, posting, or otherwise transmitting content that violates child pornography laws, child sexual exploitation laws or laws prohibiting the depiction of minors engaged in sexual conduct, or submitting any personally identifiable information about any child under the age of 13;

e. to forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Service;

f. to upload, post, or otherwise transmit any material which is likely to cause harm to DeviantArt or anyone else's computer systems, including but not limited to that which contains any virus, code, worm, data or other files or programs designed to damage or allow unauthorized access to the Service which may cause any defect, error, malfunction or corruption to the Service;

g. for any commercial purpose, except as expressly permitted under these Terms;

h. to sell access to the Service on any other website or to use the Service on another website for the primary purpose of gaining advertising or subscription revenue other than a personal blog or social network where the

primary purpose is to display content from DeviantArt by hyperlink and not to compete with DeviantArt.

19A. Commercial Activities

Commercial activities mean the offering, solicitation or sale of goods or services by anyone other than DeviantArt. Commercial activities with respect to the arts are permitted for registered members acting as individuals, for small corporations or partnerships engaged primarily in art-related activities in which one or more of the principals is a registered member or for those seeking to retain the services or works of a registered member. Commercial activities in the form of paid advertising on the Service are subject to the terms and conditions relating to the purchase of such advertising. No other commercial activities are permitted on or through the Service without DeviantArt's written approval. Any interactions with members of the Service with respect to commercial activities including payment for and delivery of goods and/or services and any terms related to the commercial activities including conditions, warranties or representations and so forth are solely between you and the other member. Paragraph 9, above, of these Terms of Service specifically applies with respect to commercial activities.

19B. Groups

As a registered member of the Service, you will also be able to participate as an administrator or member of a "Group" which is a set of user pages and applications formed for the purpose of collecting content, discussions and organizing members of the site with common interests. Further information about Groups can be found in our Etiquette Policy.

1. You agree to participate in a Group on the basis of its own rules consistent with these Terms of Service, the conduct set out in paragraph 19, above, and such other rules created by us for Groups from time to time including with respect to the use of Groups for commercial activities.

2. As an administrator or participant in a Group you acquire no ownership rights over the Group, the Group applications provided by us or over the right to conduct the activities of the Group.

3. Any Content or Artists Materials submitted to a Group remain, as between the Group and the user submitting such content, the property of the person who submitted the content.

4. Groups are managed by registered members of the Service and not by us. We are not responsible for the conduct of Group participants or administrators and will not interfere with the management or society of any specific Group or the rules it establishes for itself as long as they are consistent with these Terms of Service and our policies.

5. Groups may not be used to collect personal data about participants in Groups without the participant's express permission.

6. The Group application permits us to take appropriate action should intervention become necessary as a result of a violation of the Terms of Service or of any other of our policies. We can remove a Group and the Group's privileges at any time at our discretion.

7. The use in a Group name of trademarks or distinctive trade names of properties, goods or services is subject to objections from the owner of the marks and names. DeviantArt will respond to such objections by requiring an appropriate change in the name of the Group. The use of trademarks and trade names in Group names otherwise must be descriptive of Group activity or purpose. To avoid confusion and animosity, Groups wishing to name themselves after trademarked properties must include a further description in its name of the type of Group it expects to be such as "Master Photoshop Tutorials" instead of simply "Photoshop."

20. Suspension and Termination of Access and Membership

You agree that DeviantArt may at any time, and without notice, suspend or terminate any part of the Service, or refuse to fulfill any order, or any part of any order or terminate your membership and delete any Content stored on the DeviantArt Site, in DeviantArt's sole discretion, if you fail to comply with the Terms or applicable law.

21. Product Purchases from the DeviantArt Shop

From time to time, DeviantArt may make certain products available for purchase through the DeviantArt Shop. For example, you may have the opportunity to

purchase "Artwork" that a registered member has listed for sale through the Print Program.

All payments are to be made in US dollars and prices are subject to change at any time. Postage and applicable sales taxes will be added to your order during the checkout process. Prices do not include any import duties that may be added by the order destination country. Delivery dates are provided as an estimate only.

In general, DeviantArt accepts returns on defective products or incorrect orders within thirty (30) days after receipt of your order. Please contact DeviantArt at https://help.deviantart.com/contact/ and we will let you know whether you need to return the product(s) to us. If you do need to make a return, simply send the product(s) within thirty (30) days of receipt in the original packaging along with a copy of your invoice or order acknowledgement. Original shipping charges are not refunded on returned items. Customers are responsible for all shipping charges back to DeviantArt on returned items, and DeviantArt will pay the shipping charges on replacement product(s). Returns can be for replacement, refund or credit at DeviantArt's discretion. If your return merchandise is accepted, we will post a credit to your account within 24 hours from the time that we receive the product(s). Each return is credited in the same manner as payment. For example, if you paid for your order with a credit card, the credit will be applied to that card.

EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 21, ANY PRODUCT PURCHASED THROUGH THE DEVIANTART SHOP IS PROVIDED ON AN "AS IS" BASIS. DEVIANTART'S SOLE OBLIGATION, AND YOUR SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY DEFECTIVE PRODUCT PURCHASED THROUGH THE DEVIANTART SHOP SHALL BE FOR DEVIANTART TO PROVIDE A REPLACEMENT, REFUND OR CREDIT, AS SPECIFIED IN THE PRECEEDING PARAGRAPH.

22. Print Program

As a registered member of the Service, you will also be granted the privilege of listing certain types of Artist Materials, known as "Artwork," for sale through the

DeviantArt Shop. Visit https://www.deviantart.com/sell/ for additional details on the Print Program. Prior to submitting Artwork for sale, you must accept the additional terms and conditions of the Print Program Agreement, which is incorporated into, and forms a part of, the Terms.

23. deviantDOLLARS

deviantDOLLARS are credits issued via contest winnings or made available as an option through print sales via the Print Program that can be used to purchase products through the DeviantArt Shop or pay for subscriptions. deviantDOLLARS are not legal currency and are not legal tender. To check your balance, simply go into your Messages, once there click on the Community Messages tab and on the right hand column click View My deviantDOLLARS and this will show you your current balance. deviantDOLLARS are nontransferable and deviantDOLLARS accrued in multiple accounts may not be combined. Your deviantDOLLARS credits cannot be redeemed for cash and cannot be used towards sales tax, gift certificates or past purchases. deviantDOLLARS are void where prohibited by law.

Facebook
https://www.facebook.com/legal/terms

Welcome to Facebook!

Facebook builds technologies and services that enable people to connect with each other, build communities, and grow businesses. These Terms govern your use of Facebook, Messenger, and the other products, features, apps, services, technologies, and software we offer (the Facebook Products or Products), except where we expressly state that separate terms (and not these) apply. These Products are provided to you by Facebook, Inc.

We don't charge you to use Facebook or the other products and services covered by these Terms. Instead, businesses and organizations pay us to show you ads for their products and services. By using our Products, you agree that we can show you ads that we think will be relevant to you and your interests. We use your personal data to help determine which ads to show you.

We don't sell your personal data to advertisers, and we don't share information that directly identifies you (such as your name, email address or other contact information) with advertisers unless you give us specific permission. Instead, advertisers can tell us things like the kind of audience they want to see their ads, and we show those ads to people who may be interested. We provide advertisers with reports about the performance of their ads that help them understand how people are interacting with their content. See Section 2 below to learn more.

Our Data Policy explains how we collect and use your personal data to determine some of the ads you see and provide all of the other services described below. You can also go to your settings at any time to review the privacy choices you have about how we use your data.

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1. The services we provide

Our mission is to give people the power to build community and bring the world closer together. To help advance this mission, we provide the Products and services described below to you:

Provide a personalized experience for you:

Your experience on Facebook is unlike anyone else's: from the posts, stories, events, ads, and other content you see in News Feed or our video platform to the Pages you follow and other features you might use, such as Trending, Marketplace, and search. We use the data we have - for example, about the connections you make, the choices and settings you select, and what you share and do on and off our Products - to personalize your experience.

Connect you with people and organizations you care about:

We help you find and connect with people, groups, businesses, organizations, and others that matter to you across the Facebook Products you use. We use the data we have to make suggestions for you and others - for example, groups to join, events to attend, Pages to follow or send a message to, shows to watch, and people you may want to become friends with. Stronger ties make for better communities, and we believe our services are most useful when people are connected to people, groups, and organizations they care about.

Empower you to express yourself and communicate about what matters to you:

There are many ways to express yourself on Facebook and to communicate with friends, family, and others about what matters to you - for example, sharing status updates, photos, videos, and stories across the Facebook Products you use, sending messages to a friend or several people, creating events or groups, or adding content to your profile. We have also developed, and continue to explore, new ways for people to use technology, such as augmented reality and 360 video to create and share more expressive and engaging content on Facebook.

Help you discover content, products, and services that may interest you:

We show you ads, offers, and other sponsored content to help you discover content, products, and services that are offered by the many businesses and organizations that use Facebook and other Facebook Products. Section 2 below explains this in more detail.

Combat harmful conduct and protect and support our community:

People will only build community on Facebook if they feel safe. We employ dedicated teams around the world and develop advanced technical systems to detect misuse of our Products, harmful conduct towards others, and situations where we may be able to help support or protect our community. If we learn of content or conduct like this, we will take appropriate action - for example, offering help, removing content, removing or restricting access to certain features, disabling an account, or contacting law enforcement. We share data with other Facebook Companies when we detect misuse or harmful conduct by someone using one of our Products.

Use and develop advanced technologies to provide safe and functional services for everyone:

We use and develop advanced technologies - such as artificial intelligence, machine learning systems, and augmented reality - so that people can use our Products safely regardless of physical ability or geographic location. For example, technology like this helps people who have visual impairments understand what or who is in photos or videos shared on Facebook or Instagram. We also build sophisticated network and communication technology to help more people connect to the internet in areas with limited access. And we develop automated systems to improve our ability to detect and remove abusive and dangerous activity that may harm our community and the integrity of our Products.

Research ways to make our services better:

We engage in research to develop, test, and improve our Products. This includes analyzing the data we have about our users and understanding how people use our Products, for example by

conducting surveys and testing and troubleshooting new features. Our Data Policy explains how we use data to support this research for the purposes of developing and improving our services.

Provide consistent and seamless experiences across the Facebook Company Products:

Our Products help you find and connect with people, groups, businesses, organizations, and others that are important to you. We design our systems so that your experience is consistent and seamless across the different Facebook Company Products that you use. For example, we use data about the people you engage with on Facebook to make it easier for you to connect with them on Instagram or Messenger, and we enable you to communicate with a business you follow on Facebook through Messenger.

Enable global access to our services:

To operate our global service, we need to store and distribute content and data in our data centers and systems around the world, including outside your country of residence. This infrastructure may be operated or controlled by Facebook, Inc., Facebook Ireland Limited, or its affiliates.

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2. How our services are funded

Instead of paying to use Facebook and the other products and services we offer, by using the Facebook Products covered by these Terms, you agree that we can show you ads that businesses and organizations pay us to promote on and off the Facebook Company Products. We use your personal data, such as information about your activity and interests, to show you ads that are more relevant to you.

Protecting people's privacy is central to how we've designed our ad system. This means that we can show you relevant and useful ads without telling advertisers who you are. We don't sell your personal data. We allow advertisers to tell us things like their business goal, and the kind of audience they want to see their ads (for example, people between the age of 18-35 who like cycling). We then show their ad to people who might be interested.

We also provide advertisers with reports about the performance of their ads to help them understand how people are interacting with their content on and off Facebook. For example, we provide general demographic and interest information to advertisers (for example, that an ad was seen by a woman between the ages of 25 and 34 who lives in Madrid and likes software engineering) to help them better understand their audience. We don’t share information that directly identifies you (information such as your name or email address that by itself can be used to contact you or identifies who you are) unless you give us specific permission. Learn more about how Facebook ads work here.

We collect and use your personal data in order to provide the services described above to you. You can learn about how we collect and use your data in our Data Policy. You have controls over the types of ads and advertisers you see, and the types of information we use to determine which ads we show you. Learn more.

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3. Your commitments to Facebook and our community

We provide these services to you and others to help advance our mission. In exchange, we need you to make the following commitments:

1. Who can use Facebook

When people stand behind their opinions and actions, our community is safer and more accountable. For this reason, you must:

- Use the same name that you use in everyday life.
- Provide accurate information about yourself.
- Create only one account (your own) and use your timeline for personal purposes.
- Not share your password, give access to your Facebook account to others, or transfer your account to anyone else (without our permission).

We try to make Facebook broadly available to everyone, but you cannot use Facebook if:

- You are under 13 years old.
- You are a convicted sex offender.
- We've previously disabled your account for violations of our Terms or Policies.
- You are prohibited from receiving our products, services, or software under applicable laws.

2. What you can share and do on Facebook

We want people to use Facebook to express themselves and to share content that is important to them, but not at the expense of the safety and well-being of others or the integrity of our community. You therefore agree not to engage in the conduct described below (or to facilitate or support others in doing so):

1. You may not use our Products to do or share anything:

- That violates these Terms, our Community Standards, and other terms and policies that apply to your use of Facebook.
- That is unlawful, misleading, discriminatory or fraudulent.
- That infringes or violates someone else's rights, including their intellectual property rights.

2. You may not upload viruses or malicious code or do anything that could disable, overburden, or impair the proper working or appearance of our Products.
3. You may not access or collect data from our Products using automated means (without our prior permission) or attempt to access data you do not have permission to access.

We can remove or restrict access to content that is in violation of these provisions.

If we remove content that you have shared in violation of our Community Standards, we'll let you know and explain any options you have to request another review, unless you seriously or repeatedly violate these Terms or if doing so may expose us or others to legal liability; harm our community of users; compromise or interfere with the integrity or operation of any of our services, systems or Products; where we are restricted due to technical limitations; or where we are prohibited from doing so for legal reasons.

To help support our community, we encourage you to report content or conduct that you believe violates your rights (including intellectual property rights) or our terms and policies.

3. The permissions you give us

We need certain permissions from you to provide our services:

1. Permission to use content you create and share: Some content that you share or upload, such as photos or videos, may be protected by intellectual property laws.

You own the intellectual property rights (things like copyright or trademarks) in any such content that you create and share on Facebook and the other Facebook Company Products you use. Nothing in these Terms takes away the rights you have to your own content. You are free to share your content with anyone else, wherever you want.

However, to provide our services we need you to give us some legal permissions (known as a 'license') to use this content. This is solely for the purposes of providing and improving our Products and services as described in Section 1 above.

Specifically, when you share, post, or upload content that is covered by intellectual property rights on or in connection with our Products, you grant us a non-exclusive, transferable, sub-licensable, royalty-free, and worldwide license to host, use, distribute, modify, run, copy, publicly perform or display, translate, and create derivative works of your content (consistent with your privacy and application settings). This means, for example, that if you share a photo on Facebook, you give us permission to store, copy, and share it with others (again, consistent with

your settings) such as service providers that support our service or other Facebook Products you use.This license will end when your content is deleted from our systems.

You can delete content individually or all at once by deleting your account. Learn more about how to delete your account. You can download a copy of your data at any time before deleting your account.

When you delete content, it's no longer visible to other users, however it may continue to exist elsewhere on our systems where:

- immediate deletion is not possible due to technical limitations (in which case, your content will be deleted within a maximum of 90 days from when you delete it);
- your content has been used by others in accordance with this license and they have not deleted it (in which case this license will continue to apply until that content is deleted); or
- where immediate deletion would restrict our ability to:
    - investigate or identify illegal activity or violations of our terms and policies (for example, to identify or investigate misuse of our Products or systems);
    - comply with a legal obligation, such as the preservation of evidence; or
    - comply with a request of a judicial or administrative authority, law enforcement or a government agency;

in which case, the content will be retained for no longer than is necessary for the purposes for which it has been retained (the exact duration will vary on a case-by-case basis).

In each of the above cases, this license will continue until the content has been fully deleted.

2. Permission to use your name, profile picture, and information about your actions with ads and sponsored content: You give us permission to use your name and profile picture and information about actions you have taken on Facebook next to or in connection with ads, offers, and other sponsored content that we display across our Products, without any compensation to you. For example, we may show your friends that you are interested in an advertised event or have liked a Page created by a brand that has paid us to display its ads on Facebook. Ads like this can be seen only by people who have your permission to see the actions you've taken on Facebook. You can learn more about your ad settings and preferences.

3. Permission to update software you use or download: If you download or use our software, you give us permission to download and install updates to the software where available.

4. Limits on using our intellectual property

If you use content covered by intellectual property rights that we have and make available in our Products (for example, images, designs, videos, or sounds we provide that you add to content you create or share on Facebook), we retain all rights to that content (but not yours). You can only use our copyrights or trademarks (or any similar marks) as expressly permitted by our Brand Usage Guidelines or with our prior written permission. You must obtain our written permission (or permission under an open source license) to modify, create derivative works of, decompile, or otherwise attempt to extract source code from us.

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4. Additional provisions

1. Updating our Terms

We work constantly to improve our services and develop new features to make our Products better for you and our community. As a result, we may need to update these Terms from time to time to accurately reflect our services and practices. Unless otherwise required by law, we will notify you before we make changes to these Terms and give you an opportunity to review them before they go into effect. Once any updated Terms are in effect, you will be bound by them if you continue to use our Products.

We hope that you will continue using our Products, but if you do not agree to our updated Terms and no longer want to be a part of the Facebook community, you can delete your account at any time.

2. Account suspension or termination

We want Facebook to be a place where people feel welcome and safe to express themselves and share their thoughts and ideas.

If we determine that you have clearly, seriously or repeatedly breached our Terms or Policies, including in particular our Community Standards, we may suspend or permanently disable access to your account. We may also suspend or disable your account if you repeatedly infringe other people's intellectual property rights or where we are required to do so for legal reasons.

Where we take such action we'll let you know and explain any options you have to request a review, unless doing so may expose us or others to legal liability; harm our community of users; compromise or interfere with the integrity or operation of any of our services, systems or Products; or where we are restricted due to technical limitations; or where we are prohibited from doing so for legal reasons.

You can learn more about what you can do if your account has been disabled and how to contact us if you think we have disabled your account by mistake.

If you delete or we disable your account, these Terms shall terminate as an agreement between you and us, but the following provisions will remain in place: 3, 4.2-4.5.

3. Limits on liability

We work hard to provide the best Products we can and to specify clear guidelines for everyone who uses them. Our Products, however, are provided "as is," and we make no guarantees that they always will be safe, secure, or error-free, or that they will function without disruptions, delays, or imperfections. To the extent permitted by law, we also DISCLAIM ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. We do not control or direct what people and others do or say, and we are not responsible for their actions or conduct (whether online or offline) or any content they share (including offensive, inappropriate, obscene, unlawful, and other objectionable content).

We cannot predict when issues might arise with our Products. Accordingly, our liability shall be limited to the fullest extent permitted by applicable law, and under no circumstance will we be liable to you for any lost profits, revenues, information, or data, or consequential, special, indirect, exemplary, punitive, or incidental damages arising out of or related to these Terms or the Facebook Products, even if we have been advised of the possibility of such damages. Our aggregate liability arising out of or relating to these Terms or the Facebook Products will not exceed the greater of $100 or the amount you have paid us in the past twelve months.

4. Disputes

We try to provide clear rules so that we can limit or hopefully avoid disputes between you and us. If a dispute does arise, however, it's useful to know up front where it can be resolved and what laws will apply.

For any claim, cause of action, or dispute you have against us that arises out of or relates to these Terms or the Facebook Products ("claim"), you agree that it will be resolved exclusively in the U.S. District Court for the Northern District of California or a state court located in San Mateo County. You also agree to submit to the personal jurisdiction of either of these courts for the purpose of litigating any such claim, and that the laws of the State of California will govern these Terms and any claim, without regard to conflict of law provisions.

5. Other

1. These Terms (formerly known as the Statement of Rights and Responsibilities) make up the entire agreement between you and Facebook, Inc. regarding your use of our Products. They supersede any prior agreements.

2. Some of the Products we offer are also governed by supplemental terms. If you use any of those Products, supplemental terms will be made available and will become part of our

agreement with you. For instance, if you access or use our Products for commercial or business purposes, such as buying ads, selling products, developing apps, managing a group or Page for your business, or using our measurement services, you must agree to our Commercial Terms. If you post or share content containing music, you must comply with our Music Guidelines. To the extent any supplemental terms conflict with these Terms, the supplemental terms shall govern to the extent of the conflict.

3. If any portion of these Terms is found to be unenforceable, the remaining portion will remain in full force and effect. If we fail to enforce any of these Terms, it will not be considered a waiver. Any amendment to or waiver of these Terms must be made in writing and signed by us.

4. You will not transfer any of your rights or obligations under these Terms to anyone else without our consent.

5. You may designate a person (called a legacy contact) to manage your account if it is memorialized. Only your legacy contact or a person who you have identified in a valid will or similar document expressing clear consent to disclose your content upon death or incapacity will be able to seek disclosure from your account after it is memorialized.

6. These Terms do not confer any third-party beneficiary rights. All of our rights and obligations under these Terms are freely assignable by us in connection with a merger, acquisition, or sale of assets, or by operation of law or otherwise.

7. You should know that we may need to change the username for your account in certain circumstances (for example, if someone else claims the username and it appears unrelated to the name you use in everyday life).

8. We always appreciate your feedback and other suggestions about our products and services. But you should know that we may use them without any restriction or obligation to compensate you, and we are under no obligation to keep them confidential.

9. We reserve all rights not expressly granted to you.

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5. Other terms and policies that may apply to you

- Community Standards: These guidelines outline our standards regarding the content you post to Facebook and your activity on Facebook and other Facebook Products.

- Commercial Terms: These terms apply if you also access or use our Products for any commercial or business purpose, including advertising, operating an app on our Platform,

using our measurement services, managing a group or a Page for a business, or selling goods or services.

- Advertising Policies: These policies specify what types of ad content are allowed by partners who advertise across the Facebook Products.
- Self-Serve Ad Terms: These terms apply when you use self-serve advertising interfaces to create, submit, or deliver advertising or other commercial or sponsored activity or content.
- Pages, Groups and Events Policy: These guidelines apply if you create or administer a Facebook Page, group, or event, or if you use Facebook to communicate or administer a promotion.
- Facebook Platform Policy: These guidelines outline the policies that apply to your use of our Platform (for example, for developers or operators of a Platform application or website or if you use social plugins).
- Developer Payment Terms: These terms apply to developers of applications that use Facebook Payments.
- Community Payment Terms: These terms apply to payments made on or through Facebook.
- Commerce Policies: These guidelines outline the policies that apply when you offer products and services for sale on Facebook.
- Facebook Brand Resources: These guidelines outline the policies that apply to use of Facebook trademarks, logos, and screenshots.
- Music Guidelines: These guidelines outline the policies that apply if you post or share content containing music on Facebook.

Date of Last Revision: July 31, 2019

Gab
https://gab.com/about/tos

Last Updated: 10 April 2020

Acceptance of the Terms of Service

These terms of use are entered into by and between You and GAB AI INC (”Company,” “we,” or “us”). The following terms and conditions, together with the Copyright Policy , the Privacy Policy and any other documents expressly incorporated by reference (collectively, “Terms of Service”), govern your access to and use of GAB.COM, ONGAB.COM and DISSENTER.COM and other web properties of Gab AI Inc, including any content, functionality, and services offered on or through GAB.COM, ONGAB.COM and DISSENTER.COM (the “Website”), whether as a guest or a registered user.

Please read the Terms of Service carefully before you start to use the Website. By using the Website, you accept and agree to be bound and abide by these Terms of Service and our Privacy Policy , incorporated herein by reference. If you do not want to agree to these Terms of Service or the Privacy Policy , you must not access or use the Website.

This Website is offered and available to users who are 18 years of age or older. By using this Website, you represent and warrant that you are of legal age to form a binding contract with the Company and meet all of the foregoing eligibility requirements. If you do not meet all of these requirements, you must not access or use the Website.

Please be aware of the Terms of Sale , Privacy Policy , and Copyright Policy which are incorporated into these Terms of Service by reference.

Changes to the Terms of Service

We may revise and update these Terms of Service from time to time in our sole discretion. All changes are effective immediately when we post them, and apply to all access to and use of the Website thereafter. Your continued use of the Website following the posting of revised Terms of Service means that you accept and agree to the changes. You are expected to check this page frequently so you are aware of any changes, as they are binding on you.

Accessing the Website and Account Security

We reserve the right to withdraw or amend this Website, and any service or material we provide on the Website, in our sole discretion without notice. We will not be liable if for any reason all or any part of the Website is unavailable at any time or for any period. From time to time, we may restrict access to some parts of the Website, or the entire Website, to users, including registered users.

You are responsible for both:

- Making all arrangements necessary for you to have access to the Website.
- Ensuring that all persons who access the Website through your internet connection are aware of these Terms of Service and comply with them.

To access the Website or some of the resources it offers, you may be asked to provide certain registration details or other information. It is a condition of your use of the Website that all the information you provide on the Website is correct, current, and complete. You agree that all information you provide to register with this Website or otherwise, including, but not limited to, through the use of any interactive features on the Website, is governed by our Privacy Policy , and you consent to all actions we take with respect to your information consistent with our Privacy Policy.

If you choose, or are provided with, a user name, password, or any other piece of information as part of our security procedures, you must treat such information as confidential, and you must not disclose it to any other person or entity. You also acknowledge that your account is personal to you and agree not to provide any other person with access to this Website or portions of it using your user name, password, or other security information. You agree to notify us immediately of any unauthorized access to or use of your user name or password or any other breach of security. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information.

We have the right to disable any user name, password, or other identifier, whether chosen by you or provided by us, at any time if we believe you have violated any provision of these Terms of Service.

Intellectual Property Rights

The Website and its entire contents, features, and functionality (including but not limited to all information, software, text, displays, images, video, and audio, and the design, selection, and arrangement thereof) are owned by the Company, its licensors, or other providers of such material and are protected by United States and international copyright, trademark, patent, trade secret, and other intellectual property or proprietary rights laws. A copy of the Gab Social social networking software ("Gab Social") and the AGPL license applicable thereto may be found at our public repository.

These Terms of Service permit you to use the Website for your personal, non-commercial use only. You must not reproduce, distribute, modify, create derivative works of, publicly display, publicly perform, republish, download, store, or transmit any of the material on our Website, except as follows:

- You may use Gab Social software subject to the terms of the Affero GPL License, Version 3.
- Your computer may temporarily store copies of displayed content on the website incidental to your accessing and viewing those materials.
- You may store files that are automatically cached by your Web browser for display enhancement purposes.
- You may print or download one copy of a reasonable number of pages of the Website for your own personal, non-commercial use and not for further reproduction, publication, or distribution.
- If we provide desktop, mobile, or other applications for download, you may download one copy to each of your computers or mobile devices solely for your own personal use, provided you agree to be bound by our end user license agreement for such applications.
- Where we provide social media features with certain content on Gab.com, OnGab.com and Dissenter.com, you may take such actions as are enabled by such features.

You must not:

- Modify copies of any materials from this site.
- Delete or alter any copyright, trademark, or other proprietary rights notices from copies of materials from this site.

If you wish to make any use of material on the Website other than that set out in this section, please address your request to: legal [at] gab [dot] com.

If you print, copy, modify, download, or otherwise use or provide any other person with access to any part of the Website in breach of the Terms of Service, your right to use the Website will stop immediately and you must, at our option, return or destroy any copies of the materials you have made. No right, title, or interest in or to the Website or any content on the Website is transferred to you, and all rights not expressly granted are reserved by the Company. Any use of the Website not expressly permitted by these Terms of Service is a breach of these Terms of Service and may violate copyright, trademark, and other laws.

Trademarks

The Company name, the terms "GAB", "GAB.COM," "DISSENTER," "COMMENT SECTION OF THE INTERNET," the GAB and GAB.COM logos, and all related names, logos, product and service names, designs, and slogans are trademarks of the Company or its affiliates or licensors. You must not use such marks without the prior written permission of the Company. All other names, logos, product and service names, designs, and slogans on this Website are the trademarks of their respective owners.

Prohibited Uses

You may use the Website only for lawful purposes and in accordance with these Terms of Service. You agree not to use the Website:

- In any way that would violate any applicable federal, state, or local law of the United States of America (including, without limitation, any laws regarding the export of data or software to and from the US or other countries) and is not protected by the First Amendment to the U.S. Constitution (the "First Amendment").
- For the purpose of exploiting, harming, or attempting to exploit or harm minors in any way by exposing them to inappropriate content, asking for personally identifiable information, or otherwise.

- To send, knowingly receive, upload, download, use, or re-use any material that does not comply with the Content Standards set out in these Terms of Service.

- To transmit, or procure the sending of, any unwanted advertising or promotional material, including any “junk mail,” “chain letter,” “spam,” tagging random users in posts on your timeline, follower spam, or any other similar solicitation. For avoidance of doubt, this is not thought to encompass reasonable commercial use of a Gab feed by a commercial entity or individual to advertise your own commercial products.

- To impersonate or attempt to impersonate the Company or a Company employee, or to impersonate another user or any other person or entity for a purpose that is not protected by the First Amendment.

- To engage in any other conduct which, as determined by us, may result in the physical harm or offline harassment of the Company, individual users of the Website or any other person (e.g. “doxing”), or expose them to liability.

Additionally, you agree not to:

- Use the Website in any manner that could disable, overburden, damage, or impair the site or interfere with any other party’s use of the Website, including their ability to engage in real time activities through the Website.

- Use any robot, spider, or other automatic device, process, or means to access the Website for any purpose, including monitoring or copying any of the material on the Website.

- Use any manual process to monitor or copy any of the material on the Website, or for any other purpose not expressly authorized in these Terms of Service, without our prior written consent.

- Use any device, software, or routine that interferes with the proper working of the Website.

- Introduce any viruses, Trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful.

- Attempt to gain unauthorized access to, interfere with, damage, or disrupt any parts of the Website, the server on which the Website is stored, or any server, computer, or database connected to the Website.

- Attack the Website via a denial-of-service attack or a distributed denial-of-service attack.
- Otherwise attempt to interfere with the proper working of the Website.

User Contributions

The Website may contain message boards, chat rooms, personal web pages or profiles, forums, bulletin boards, group pages, discussion threads, and other interactive features (collectively, "Interactive Services") that allow users to post, submit, publish, display, or transmit to other users or other persons (hereinafter, "post") content or materials (collectively, "User Contributions") on or through the Website.

All User Contributions must comply with the Content Standards set out in these Terms of Service. Any User Contribution you post to the site will be considered non-confidential and non-proprietary. By providing any User Contribution on the Website, you grant us and our affiliates and service providers, and each of their and our licensees, successors, and assigns an irrevocable, perpetual, royalty-free right to use, republish, reproduce, modify, perform, display, distribute, and otherwise disclose to third parties any such material for any purpose.

You represent and warrant that:

- You own or control all rights in and to the User Contributions and have the right to grant the license granted above to us and our affiliates and service providers, and each of their and our respective licensees, successors, and assigns.
- All of your User Contributions do and will comply with these Terms of Service.

You understand and acknowledge that you are responsible for any User Contributions you submit or contribute, and you, not the Company, have full responsibility for such content, including its legality, reliability, accuracy, and appropriateness.

We are not responsible or liable to any third party for the content or accuracy of any User Contributions posted by you or any other user of the Website.

Monitoring and Enforcement; Termination

We strive to ensure that the First Amendment remains the Website's standard for content moderation. We will make best efforts to ensure that all content moderation decisions and enforcement of these terms of service does not punish users for exercising their God-given right to speak freely.

We collect comparatively little data on our users relative to other social networking sites. Our default position is that we should implement no prior restraints on any User Contribution. However, given the breadth of speech we permit, there may be circumstances where we are unable to determine whether content is protected by the First Amendment or not and prudence may require us to err on the side of caution. Accordingly, the Company reserves the right to take any action with respect to any User Contribution that we deem necessary or appropriate in our sole discretion, including the following:

- Take any action with respect to any User Contribution that we deem necessary or appropriate in our sole discretion, including if we believe that such User Contribution violates the Terms of Service, including the Content Standards, infringes any intellectual property right or other right of any person or entity, or could threaten the physical safety of users of the Website or the public.

- Take appropriate legal action, including without limitation referral to law enforcement, for any illegal or unauthorized use of the Website or in cases of life-threatening emergency.

- Terminate or suspend your access to all or part of the Website for any violation of these Terms of Service.

If your access to the Website is terminated or suspended in relation to a User Contribution authored by you that you believe constitutes protected political or religious speech, and you are able to demonstrate that the User Contribution in question was protected by the First Amendment by obtaining a declaratory judgment from a court of competent jurisdiction, the company will consider permitting you to re-join the site.

It is the policy of the Company to not provide any user data to any person unless compelled by a court order issued by a U.S. court, except in cases of life-threatening emergency. The Company reserves the right to change or deviate from this policy at any time, in its sole and absolute discretion, with or without notice to you. Without limiting the foregoing, we have the right to cooperate fully with any law enforcement authorities or civil and criminal court orders requesting or

directing us to disclose the identity or other information of anyone posting any materials on or through the Website. YOU WAIVE AND HOLD HARMLESS THE COMPANY AND ITS AFFILIATES, LICENSEES, AND SERVICE PROVIDERS FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY ANY OF THE FOREGOING PARTIES DURING, OR TAKEN AS A CONSEQUENCE OF, INVESTIGATIONS BY EITHER SUCH PARTIES OR LAW ENFORCEMENT AUTHORITIES.

We do not review material before it is posted on the Website and cannot ensure prompt removal of unlawful material after it has been posted. Accordingly, we assume no liability for any action or inaction regarding transmissions, communications, or content provided by any user or third party. We have no liability or responsibility to anyone for performance or nonperformance of the activities described in this section.

Content Standards

These Content Standards apply to any and all User Contributions and use of Interactive Services.

As a general rule, written expression that is protected political, religious, symbolic, or commercial speech under the First Amendment of the U.S. Constitution will be allowed on the Website. User Contributions absolutely must in their entirety comply with all applicable federal, state, and local regulations in the United States.

Without limiting the generality of the foregoing, User Contributions must NOT:

- Be unlawful or be made in furtherance of any unlawful purpose. User Contributions must not aid, abet, assist, counsel, procure or solicit the commission of, nor constitute an attempt or part of a conspiracy to commit, any unlawful act. For avoidance of doubt, speech which is merely offensive or the expression of an offensive or controversial idea or opinion, as a general rule, will be in poor taste but will not be illegal in the United States.
- Unlawfully threaten.
- Incite imminent lawless action.
- Interfere with the operation of any computer.

- Be obscene, sexually explicit or pornographic. Note that mere nudity e.g. as a form of protest or for educational/medical reasons will not fall foul of this rule.
- Infringe any patent, trademark, trade secret, copyright, or other intellectual property or other rights of any other person.
- Violate the legal rights (including the rights of publicity and privacy) of others or contain any material that could give rise to any civil or criminal liability under applicable laws or regulations of the United States or that otherwise may be in conflict with these Terms of Service and our Privacy Policy.
- Impersonate any person, or misrepresent your identity or affiliation with any person or organization, for a purpose not protected by the First Amendment.
- Involve commercial activities relating to finance, investments or gambling, such as contests and sweepstakes, penny stock promotion, money transmission, or Initial Coin Offerings; or the trade of live or endangered animals or animal parts, or anything that portrays or encourages the abuse of animals.
- Give the impression that they emanate from or are endorsed by us or any other person or entity, if this is not the case.
- Link to any content from the above-listed categories.

Although our Content Standards, following the First Amendment, do not proscribe offensive speech, we strongly encourage you to ensure that your User Contributions are cordial and civil. The foundation of a free society requires people to peacefully settle their differences through dialogue and debate. Gab exists to promote the free flow of information online. It is our view that the responsible exercise of one's free speech rights is its own reward and, as a general rule, the most well-respected online publishers tend to be the ones who behave the most civilly and put forward their arguments most intelligently.

Copyright Infringement

If you believe that any User Contributions violate your copyright, please see our Copyright Policy for instructions on sending us a notice of copyright infringement. It is the policy of the Company to terminate the user accounts of repeat infringers.

Reliance on Information Posted

The information presented on or through the Website is made available solely for general information purposes. We do not warrant the accuracy, completeness, or usefulness of this information. Any reliance you place on such information is strictly at your own risk. We disclaim all liability and responsibility arising from any reliance placed on such materials by you or any other visitor to the Website, or by anyone who may be informed of any of its contents.

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All information we collect on this Website is subject to our Privacy Policy. By using the Website, you consent to all actions taken by us with respect to your information in compliance with the Privacy Policy.

Online Purchases and Other Terms and Conditions

All purchases through our site or other transactions for the sale of services formed through the Website, or resulting from visits made by you, are governed by our Terms of Sale.

Additional terms and conditions may also apply to specific portions, services, or features of the Website. All such additional terms and conditions are hereby incorporated by this reference into these Terms of Service.

Linking to the Website and Social Media Features

You may link to the Website, provided you do so in a way that is fair and legal and does not damage our reputation or take advantage of it, but you must not establish a link in such a way as to suggest any form of association, approval, or endorsement on our part without our express written consent.

This Website may provide certain social media features that enable you to:

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- Link from your own or certain third-party websites to certain content on this Website.
- Send emails or other communications with certain content, or links to certain content, on this Website.
- Cause limited portions of content on this Website to be displayed or appear to be displayed on your own or certain third-party websites.

You may use these features solely as they are provided by us, solely with respect to the content they are displayed with, and otherwise in accordance with any additional terms and conditions we provide with respect to such features.

The website from which you are linking, or on which you make certain content accessible, must comply in all respects with the Content Standards set out in these Terms of Service.

You agree to cooperate with us in causing any unauthorized framing or linking immediately to stop. We reserve the right to withdraw linking permission without notice. We may disable all or any social media features and any links at any time without notice in our discretion.

Links from the Website

If the Website contains links to other sites and resources provided by third parties, these links are provided for your convenience only. This includes links contained in advertisements, including banner advertisements and sponsored links. We have no control over the contents of those sites or resources, and accept no responsibility for them or for any loss or damage that may arise from your use of them. If you decide to access any of the third-party websites linked to this Website, you do so entirely at your own risk and subject to the terms and conditions of use for such websites.

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Limitation on Liability

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DOES NOT AFFECT ANY LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

Indemnification

You agree to defend, indemnify, and hold harmless the Company, its affiliates, licensors, and service providers, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors, and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses, or fees (including reasonable attorneys' fees) arising out of or relating to your violation of these Terms of Service or your use of the Website, including, but not limited to, your User Contributions, any use of the Website's content, services, and products other than as expressly authorized in these Terms of Service, or your use of any information obtained from the Website.

Governing Law and Jurisdiction

All matters relating to the Website and these Terms of Service, and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the internal laws of the State of Pennsylvania without giving effect to any choice or conflict of law provision or rule (whether of the State of Pennsylvania or any other jurisdiction).

Any legal suit, action, or proceeding arising out of, or related to, these Terms of Service or the Website shall be instituted exclusively in the federal courts of the United States or the courts of the State of Pennsylvania, in each case located in the City of Scranton and Lackawanna County, although we retain the right to bring any suit, action, or proceeding against you for breach of these Terms of Service in your state or country of residence or any other relevant jurisdiction. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

Arbitration

At Company's sole discretion, it may require you to submit any disputes arising from these Terms of Service or use of the Website, including disputes arising from or concerning their interpretation, violation, invalidity, non-performance, or

termination, to final and binding arbitration under the Rules of Arbitration of the American Arbitration Association applying Pennsylvania law.

Limitation on Time to File Claims

ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THESE TERMS OF USE OR THE WEBSITE MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES; OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

Waiver and Severability

No waiver by the Company of any term or condition set out in these Terms of Service shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of the Company to assert a right or provision under these Terms of Service shall not constitute a waiver of such right or provision.

If any provision of these Terms of Service is held by a court or other tribunal of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of the Terms of Service will continue in full force and effect.

Entire Agreement

The Terms of Service, our Privacy Policy , our Copyright Policy and any Terms of Sale constitute the sole and entire agreement between you and Gab AI Inc. regarding the Website and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding the Website.

Your Comments and Concerns

This Website is operated by GAB AI INC.

All notices of copyright infringement claims should be sent pursuant to the terms of our Copyright Policy in the manner and by the means set out therein.

All other feedback, comments, requests for technical support, and other communications relating to the Website should be directed to

Gab AI Inc
700 N State Street
Clarks Summit, PA 18411

Or by contacting support (at) gab (dot) com.

iCloud
https://www.apple.com/legal/internet-services/icloud/en/terms.html

THIS LEGAL AGREEMENT BETWEEN YOU AND APPLE GOVERNS YOUR USE OF THE iCLOUD PRODUCT, SOFTWARE, SERVICES, AND WEBSITES (COLLECTIVELY REFERRED TO AS THE "SERVICE"). IT IS IMPORTANT THAT YOU READ AND UNDERSTAND THE FOLLOWING TERMS. BY CLICKING "AGREE," YOU ARE AGREEING THAT THESE TERMS WILL APPLY IF YOU CHOOSE TO ACCESS OR USE THE SERVICE.

Apple is the provider of the Service, which permits you to utilize certain Internet services, including storing your personal content (such as contacts, calendars, photos, notes, reminders, documents, app data, and iCloud email) and making it accessible on your compatible devices and computers, and certain location based services, only under the terms and conditions set forth in this Agreement. iCloud is automatically enabled when you are running devices on iOS 9 or later and sign in with your Apple ID during device setup, unless you are upgrading the device and have previously chosen not to enable iCloud. You can disable iCloud in Settings. When iCloud is enabled, your content will be automatically sent to and stored by Apple, so you can later access that content or have content wirelessly pushed to your other iCloud-enabled devices or computers.

I. REQUIREMENTS FOR USE OF THE SERVICE

A. Age. The Service is only available to individuals aged 13 years or older (or equivalent minimum age in the relevant jurisdiction), unless you are under 13 years old and your Apple ID was provided to you as a result of a request by an approved educational institution or established as part of the Family Sharing feature by your parent or guardian. We do not knowingly collect, use or disclose personal information from children under 13, or equivalent minimum age in the relevant jurisdiction, without verifiable parental consent. Parents and guardians should also remind any minors that conversing with strangers on the Internet can be dangerous and take appropriate precautions to protect children, including monitoring their use of the Service.

To use the Service, you cannot be a person barred from receiving the Service under the laws of the United States or other applicable jurisdictions, including the country in which you reside or from where you use the Service. By accepting this Agreement, you represent that you understand and agree to the foregoing.

B. Devices and Accounts. Use of the Service may require compatible devices, Internet access, and certain software (fees may apply); may require periodic updates; and may be affected by the performance of these factors. Apple reserves the right to limit the number of Accounts that may be created from a device and the number of devices associated with an Account. The latest version of required software may be required for certain transactions or features. You agree that meeting these requirements is your responsibility.

C. Limitations on Use. You agree to use the Service only for purposes permitted by this Agreement, and only to the extent permitted by any applicable law, regulation, or generally accepted practice in the applicable jurisdiction. Your Account is allocated 5GB of storage capacity as described in the iCloud feature pages. Additional storage is available for purchase, as described below. Exceeding any applicable or reasonable limitation of bandwidth, or storage capacity (for example, backup or email account space) is prohibited and may prevent you from backing up to iCloud, adding documents, or receiving new email sent to your iCloud email address. If your use of the Service or other behavior intentionally or unintentionally threatens Apple's ability to provide the Service or other systems, Apple shall be entitled to take all reasonable steps to protect the Service and Apple's systems, which may include suspension of your access to the Service. Repeated violations of the limitations may result in termination of your Account.

If you are a covered entity, business associate or representative of a covered entity or business associate (as those terms are defined at 45 C.F.R § 160.103), You agree that you will not use any component, function or other facility of iCloud to create, receive, maintain or transmit any "protected health information" (as such term is defined at 45 C.F.R § 160.103) or use iCloud in any manner that would make Apple (or any Apple Subsidiary) Your or any third party's business associate.

D. Availability of the Service. The Service, or any feature or part thereof, may not be available in all languages or in all countries and Apple makes no representation that the Service, or any feature or part thereof, is appropriate or available for use in any particular location. To the extent you choose to access and use the Service, you do so at your own initiative and are responsible for compliance with any applicable laws.

E. Changing the Service. Apple reserves the right at any time to modify this Agreement and to impose new or additional terms or conditions on your use of the Service, provided that Apple will give you 30 days' advance notice of any material adverse change to the Service or applicable terms of service, unless it would not be reasonable to do so due to circumstances arising from legal, regulatory, or

governmental action; to address user security, user privacy, or technical integrity concerns; to avoid service disruptions to other users; or due to a natural disaster, catastrophic event, war, or other similar occurrence outside of Apple's reasonable control. With respect to paid cloud storage services, Apple will not make any material adverse change to the Service before the end of your current paid term, unless a change is reasonably necessary to address legal, regulatory, or governmental action; to address user security, user privacy, or technical integrity concerns; to avoid service disruptions to other users; or to avoid issues resulting from a natural disaster, a catastrophic event, war, or other similar occurrence outside of Apple's reasonable control. In the event that Apple does make material adverse changes to the Service or terms of use, you will have the right to terminate this Agreement and your account, in which case Apple will provide you with a pro rata refund of any pre-payment for your then-current paid term. Apple shall not be liable to you for any modifications to the Service or terms of service made in accordance with this Section IE.

II. FEATURES AND SERVICES

A. Use of Location-based Services

Apple and its partners and licensors may provide certain features or services that rely upon device-based location information using GPS (or similar technology, where available) and crowdsourced Wi-Fi access points and cell tower locations. To provide such features or services, where available, Apple and its partners and licensors must collect, use, transmit, process and maintain your location data, including but not limited to the geographic location of your device and information related to your iCloud account ("Account") and any devices registered thereunder, including but not limited to your Apple ID, device ID and name, and device type.

You may withdraw consent to Apple and its partners' and licensors' collection, use, transmission, processing and maintenance of location and Account data at any time by not using the location-based features and turning off Find My (including the predecessor apps Find My iPhone and Find My Friends, collectively referred to as "Find My"), or Location Services in Settings (as applicable) on your device. When using third party services that use or provide location data as part of the Service, you are subject to and should review such third party's terms and privacy policy on use of location data by such third party services. Any location data provided by the Service is not intended to be relied upon in situations where precise location information is needed or where erroneous, inaccurate, time-delayed or incomplete location data may lead to death, personal injury, property or environmental damage. Apple shall use reasonable skill and due care in providing

the Service, but neither Apple nor any of its service and/or content providers guarantees the availability, accuracy, completeness, reliability, or timeliness of location data or any other data displayed by the Service. LOCATION-BASED SERVICES ARE NOT INTENDED OR SUITABLE FOR USE AS AN EMERGENCY LOCATOR SYSTEM.

B. Find My

When you enable iCloud and Location Services on a device running iOS 13, iPad OS or macOS Catalina or later, Find My (Find My iPhone for devices running iOS 8 through iOS 12) will be enabled automatically on that device and any Apple accessories paired with it. Once enabled, your device will be automatically linked to your Apple ID and your Apple ID password will be required before anyone (including you) can turn off Find My, sign out of iCloud, erase or activate the device. Apple and its authorized agents may not perform hardware or software support services, including services under Apple's limited warranty, unless you disable Find My prior to service. Apple shall bear no responsibility for your failure to protect your iOS device with a passcode, enable Lost Mode, and/or receive or respond to notices and communications. Apple shall also bear no responsibility for returning your iOS device to you or for any loss of data on your iOS device.

Offline Finding is a crowdsourcing feature that can help you and others locate missing devices when those devices are not connected to the internet. If Offline Finding is enabled on a device, it can detect the presence of nearby offline devices via Bluetooth (or similar technologies). If a device detects a missing offline device, it will use Wi-Fi or cellular connections to securely report the approximate location of the device back to the Apple ID associated with the device so the owner can view its location in the Find My app. Location reporting is end-to-end encrypted, and Apple cannot see the location of the reporting device or any offline device. You can disable Offline Finding in Settings.

C. Backup

iCloud Backup periodically creates automatic backups for iOS devices, when the device is screen locked, connected to a power source, and connected to the Internet via a Wi-Fi network. If a device has not backed up to iCloud for a period of one hundred and eighty (180) days, Apple reserves the right to delete any backups associated with that device. Backup may include device settings, device characteristics, photos and videos, documents, your messages, ringtones, Health app data and other app data. For additional information, please go

to https://support.apple.com/en-us/HT207428. The following content is not included in your iCloud backup: content purchased from the iTunes Store, App Store, or Apple Books, media synced from your computer, and your photo library if you have enabled iCloud Photo Library. Apple shall use reasonable skill and due care in providing the Service, but, TO THE GREATEST EXTENT PERMISSIBLE BY APPLICABLE LAW, APPLE DOES NOT GUARANTEE OR WARRANT THAT ANY CONTENT YOU MAY STORE OR ACCESS THROUGH THE SERVICE WILL NOT BE SUBJECT TO INADVERTENT DAMAGE, CORRUPTION, LOSS, OR REMOVAL IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT, AND APPLE SHALL NOT BE RESPONSIBLE SHOULD SUCH DAMAGE, CORRUPTION, LOSS, OR REMOVAL OCCUR. It is your responsibility to maintain appropriate alternate backup of your information and data.

D. Photos

1. iCloud Photos. When you enable iCloud Photos, your photos, videos, metadata and any edits that you make in the Photos App on your iOS device, macOS computer, or Windows PC will be automatically uploaded and stored in iCloud, and then pushed to all of your other iCloud Photos-enabled devices and computers. The photo and video resolution may vary depending on your device settings and available storage. You may download full resolution photos and videos at any time.

2. Shared Albums. When you use Shared Albums, Apple stores any photos and videos you share until you delete them. You can access your shared photos and videos from any of your Apple devices that have Shared Albums enabled. People you invite to shared albums may view, save, copy, and share these photos and videos, as well as contribute photos and videos, and comments. If you choose to use Shared Albums to share photos via a web link, these photos will be publicly available to anyone who has been provided or has access to the web link. If you want to stop sharing individual photos, videos, comments or entire Shared Albums, you may delete them at any time. However, any content previously copied from a Shared Album to another device or computer will not be deleted.

3. My Photo Stream. When you use My Photo Stream, Apple stores photos taken on your iOS device or uploaded from your computer for a limited period of time and automatically pushes the photos to your other Apple devices that have My Photo Stream enabled. A limited number of photos may be stored in iCloud or on your devices at any one time, and older photos will be automatically deleted from

My Photo Stream over time. To keep these photos permanently, you must save them to the camera roll on your iOS device or the photo library on your computer.

E. Family Sharing. With Family Sharing, you can share certain purchased content such as Store purchases and Apple subscriptions with members of your family. You may also share certain content such as photos, calendars, location, and screen time information depending on what your family chooses to share. For more information regarding sharing your content purchases, please see the Apple Media Services Terms and Conditions at https://www.apple.com/legal/internet-services/itunes/ww/. For more information about sharing content, device usage and location information with family members, please see https://www.apple.com/family-sharing/

F. File Sharing. When you use iCloud File Sharing, Apple stores any files you share until you delete them. You can access your shared files from any of your Apple devices with iCloud Drive enabled. You may give access to people to view, save, copy or edit these files. You have the option to give people the right to edit the files or to only view them. If you use iCloud File Sharing to share files via a web link, these files will be publicly accessible to anyone who has been provided the web link. You can stop sharing files at any time. If you stop sharing, files will be removed from iCloud Drive on everyone's devices. However, any file previously copied to another device or computer will not be deleted.

G. Mail Drop. If you are logged in to iCloud and you use the macOS Mail app or iCloud Mail on the web to send emails with large attachments, you will have the option of using Mail Drop. With Mail Drop, your large attachments will be temporarily stored on iCloud servers in order to facilitate their delivery. Apple will either send a link or a preview of the attachment to recipients, depending on your recipient's email client application. Temporary storage of large email attachments will not count towards your iCloud storage quota. For more information about Mail Drop, please go to https://support.apple.com/en-us/HT203093.

H. Third Party Apps. If you sign in to certain third party Apps with your iCloud credentials, you agree to allow that App to store data in your personal iCloud account and for Apple to collect, store and process such data on behalf of the relevant third-party App Developer in association with your use of the Service and such Apps. The data that the App stores in your personal iCloud account will count towards your storage limit. Such data may be shared with another App that you download from the same App Developer.

I. iCloud web-only account. If you sign up for the Service with a web-only account on a non-Apple-branded device or computer, you will have access to only a limited set of Service functionality. You will receive 1 GB of free storage and you will not be able to increase this amount with a web-only account. As a condition to accessing the Service with a web-only account, you agree to all relevant terms and conditions found in this Agreement, including, without limitation, all requirements for use of the Service, limitations on use, availability, public beta, disclaimers of warranties, rules regarding your content and conduct, and termination. Terms found in this Agreement relating to features not available for web-only users will not be applicable to you. These include, for example, use of location based services and payment of fees for iCloud storage upgrades. You further agree that if you subsequently access your web-only account from an Apple-branded device or Apple-branded computer, whether or not you own such device or computer, Apple may automatically upgrade your web-only account to a full iCloud account and provide all available functionality of the Service to you, including increased free storage capacity. If you choose to access your web-only account from an Apple-branded device or Apple-branded computer and you are subsequently upgraded to full functionality of the Service, you agree that all of the terms and conditions contained herein apply to your use of the Service. If you do not want to have a full iCloud account, do not sign in to your web-only account from an Apple-branded device or computer.

J. Two-Factor Authentication and Autodialed Calls/Texts. If you choose to enable Two-Factor Authentication for your Apple ID, you consent to (a) provide Apple at least one telephone number; and (b) receive autodialed or prerecorded calls and text messages from Apple at any of the telephone numbers provided. We may place such calls or texts to (i) help keep your Account secure when signing in; (ii) help you access your Account when you've forgotten your password; or (iii) as otherwise necessary to service your Account or enforce this Agreement, our policies, applicable law, or any other agreement we may have with you.

III. SUBSCRIPTION STORAGE UPGRADES

Additional storage is available for purchase on a subscription basis.

A. Payment

By upgrading your storage on your device or computer, Apple will automatically charge on a recurring basis the storage fee for the storage plan you choose, including any applicable taxes, to the payment method associated with your Apple ID (e.g., the payment method you use to shop on the iTunes Store, App Store, or

Apple Books, if available) or the payment method associated with your Family account. For details about storage plans and pricing, please visit https://support.apple.com/en-us/HT201238. If you are a Family organizer, you agree to have Apple charge your payment method on a recurring basis for members of your Family who upgrade their storage. Apple may also obtain preapproval for an amount up to the amount of the transaction and contact you periodically by email to the email address associated with your Apple ID for billing reminders and other storage account-related communications.

You can change your subscription by upgrading or downgrading your storage under the iCloud section of Settings on your device, or under the iCloud pane of System Preferences on your Mac or iCloud for Windows on your PC.

The applicable storage fee for an upgraded storage plan will take effect immediately; downgrades to your storage plan will take effect on the next annual or monthly billing date. YOU ARE RESPONSIBLE FOR THE TIMELY PAYMENT OF ALL FEES AND FOR PROVIDING APPLE WITH VALID CREDIT CARD OR PAYMENT ACCOUNT DETAILS FOR PAYMENT OF ALL FEES. If Apple is unable to successfully charge your credit card or payment account for fees due, Apple reserves the right to revoke or restrict access to your stored Content, delete your stored Content, or terminate your Account. If you want to designate a different credit card or payment account or if there is a change in your credit card or payment account status, you must change your information online in the Account Information section of iCloud; this may temporarily disrupt your access to the Services while Apple verifies your new payment information. We may contact you via email regarding your account, for reasons including, without limitation, reaching or exceeding your storage limit.

If you are in Brazil, notwithstanding anything herein to the contrary:

For any charges made by Apple to you, Apple may use an affiliated company to perform activities of collection and remittances to charge any amounts owed by you in connection with your iCloud account. In addition, your total price will include the price of the upgrade plus any applicable credit card fees. You are responsible for any taxes applicable to you except for any applicable withholding taxes which shall be collected by Apple's affiliated company. You must provide all account information required by Apple to enable such transactions. You acknowledge and agree that if you do not provide all required account information, Apple shall have the right to terminate your account.

B. Right of Withdrawal

If you choose to cancel your subscription following its initial purchase or, if you are on an annual payment plan, following the commencement of any renewal term, you may do so by informing Apple with a clear statement (see applicable address details in section "General" below) within 14 days from when you received your e-mail confirmation by contacting Customer Support. You do not need to provide a reason for cancellation.

To meet the cancellation deadline, you must send your communication of cancellation before the 14-day period has expired.

Customers in the EU and Norway also have the right to inform us using the model cancellation form below:

To: Apple Distribution International Ltd., Hollyhill Industrial Estate, Hollyhill, Cork, Republic of Ireland:

I hereby give notice that I withdraw from my contract for the following:

[SUBSCRIPTION AMOUNT AND PERIOD, e.g., 200 GB MONTHLY iCLOUD SUBSCRIPTION STORAGE UPGRADE]

Ordered on [INSERT DATE]

Name of consumer

Address of consumer

Date

Effects of cancellation

We will reduce your storage back to 5 GB and reimburse you no later than 14 days from the day on which we receive your cancellation notice. If you have used more than 5GB of storage during this period, you may not be able to create any more iCloud backups or use certain features until you have reduced your storage. We will use the same means of payment as you used for the transaction, and you will not incur any fees for such reimbursement.

IV. Your Use of the Service

A. Your Account

As a registered user of the Service, you must establish an Account. Don't reveal your Account information to anyone else. You are solely responsible for maintaining the confidentiality and security of your Account and for all activities that occur on or through your Account, and you agree to immediately notify Apple of any security breach of your Account. You further acknowledge and agree that the Service is designed and intended for personal use on an individual basis and you should not share your Account and/or password details with another individual. Provided we have exercised reasonable skill and due care, Apple shall not be responsible for any losses arising out of the unauthorized use of your Account resulting from you not following these rules.

In order to use the Service, you must enter your Apple ID and password to authenticate your Account. You agree to provide accurate and complete information when you register with, and as you use, the Service ("Service Registration Data"), and you agree to update your Service Registration Data to keep it accurate and complete. Failure to provide accurate, current and complete Service Registration Data may result in the suspension and/or termination of your Account. You agree that Apple may store and use the Service Registration Data you provide for use in maintaining and billing fees to your Account.

B. Use of Other Apple Products and Services

Particular components or features of the Service provided by Apple and/or its licensors, including but not limited to the ability to download previous purchases and iTunes Match and/or iCloud Music Library (additional fees apply), require separate software or other license agreements or terms of use. You must read, accept, and agree to be bound by any such separate agreement as a condition of using these particular components or features of the Service.

C. No Conveyance

Nothing in this Agreement shall be construed to convey to you any interest, title, or license in an Apple ID, email address, domain name, iChat ID, or similar resource used by you in connection with the Service.

D. No Right of Survivorship

Unless otherwise required by law, You agree that your Account is non-transferable and that any rights to your Apple ID or Content within your Account terminate upon your death. Upon receipt of a copy of a death certificate your Account may be terminated and all Content within your Account deleted. Contact iCloud Support at https://support.apple.com/icloud for further assistance.

E. No Resale of Service

You agree that you will not reproduce, copy, duplicate, sell, resell, rent or trade the Service (or any part thereof) for any purpose.

V. Content and Your Conduct

A. Content

“Content” means any information that may be generated or encountered through use of the Service, such as data files, device characteristics, written text, software, music, graphics, photographs, images, sounds, videos, messages and any other like materials. You understand that all Content, whether publicly posted or privately transmitted on the Service is the sole responsibility of the person from whom such Content originated. This means that you, and not Apple, are solely responsible for any Content you upload, download, post, email, transmit, store or otherwise make available through your use of the Service. You understand that by using the Service you may encounter Content that you may find offensive, indecent, or objectionable, and that you may expose others to Content that they may find objectionable. Apple does not control the Content posted via the Service, nor does it guarantee the accuracy, integrity or quality of such Content. You understand and agree that your use of the Service and any Content is solely at your own risk.

B. Your Conduct

You agree that you will NOT use the Service to:

a. upload, download, post, email, transmit, store or otherwise make available any Content that is unlawful, harassing, threatening, harmful, tortious, defamatory, libelous, abusive, violent, obscene, vulgar, invasive of another’s privacy, hateful, racially or ethnically offensive, or otherwise objectionable;

b. stalk, harass, threaten or harm another;

c. if you are an adult, request personal or other information from a minor (any person under the age of 18 or such other age as local law defines as a minor) who is not personally known to you, including but not limited to any of the following: full name or last name, home address, zip/postal code, telephone number, picture, or the names of the minor’s school, church, athletic team or friends;

d. pretend to be anyone, or any entity, you are not — you may not impersonate or misrepresent yourself as another person (including celebrities), entity, another

iCloud user, an Apple employee, or a civic or government leader, or otherwise misrepresent your affiliation with a person or entity (Apple reserves the right to reject or block any Apple ID or email address which could be deemed to be an impersonation or misrepresentation of your identity, or a misappropriation of another person's name or identity);

e. engage in any copyright infringement or other intellectual property infringement (including uploading any content to which you do not have the right to upload), or disclose any trade secret or confidential information in violation of a confidentiality, employment, or nondisclosure agreement;

f. post, send, transmit or otherwise make available any unsolicited or unauthorized email messages, advertising, promotional materials, junk mail, spam, or chain letters, including, without limitation, bulk commercial advertising and informational announcements;

g. forge any TCP-IP packet header or any part of the header information in an email or a news group posting, or otherwise putting information in a header designed to mislead recipients as to the origin of any Content transmitted through the Service ("spoofing");

h. upload, post, email, transmit, store or otherwise make available any material that contains viruses or any other computer code, files or programs designed to harm, interfere or limit the normal operation of the Service (or any part thereof), or any other computer software or hardware;

i. interfere with or disrupt the Service (including accessing the Service through any automated means, like scripts or web crawlers), or any servers or networks connected to the Service, or any policies, requirements or regulations of networks connected to the Service (including any unauthorized access to, use or monitoring of data or traffic thereon);

j. plan or engage in any illegal activity; and/or

k. gather and store personal information on any other users of the Service to be used in connection with any of the foregoing prohibited activities.

C. Removal of Content

You acknowledge that Apple is not responsible or liable in any way for any Content provided by others and has no duty to screen such Content. However, Apple reserves the right at all times to determine whether Content is appropriate

and in compliance with this Agreement, and may screen, move, refuse, modify and/or remove Content at any time, without prior notice and in its sole discretion, if such Content is found to be in violation of this Agreement or is otherwise objectionable.

D. Back up Your Content

You are responsible for backing up, to your own computer or other device, any important documents, images or other Content that you store or access via the Service. Apple shall use reasonable skill and due care in providing the Service, but Apple does not guarantee or warrant that any Content you may store or access through the Service will not be subject to inadvertent damage, corruption or loss.

E. Access to Your Account and Content

Apple reserves the right to take steps Apple believes are reasonably necessary or appropriate to enforce and/or verify compliance with any part of this Agreement. You acknowledge and agree that Apple may, without liability to you, access, use, preserve and/or disclose your Account information and Content to law enforcement authorities, government officials, and/or a third party, as Apple believes is reasonably necessary or appropriate, if legally required to do so or if Apple has a good faith belief that such access, use, disclosure, or preservation is reasonably necessary to: (a) comply with legal process or request; (b) enforce this Agreement, including investigation of any potential violation thereof; (c) detect, prevent or otherwise address security, fraud or technical issues; or (d) protect the rights, property or safety of Apple, its users, a third party, or the public as required or permitted by law.

F. Copyright Notice - DMCA

If you believe that any Content in which you claim copyright has been infringed by anyone using the Service, please contact Apple's Copyright Agent as described in our Copyright Policy at https://www.apple.com/legal/trademark/claimsofcopyright.html. Apple may, in its sole discretion, suspend and/or terminate Accounts of users that are found to be repeat infringers.

G. Violations of this Agreement

If while using the Service, you encounter Content you find inappropriate, or otherwise believe to be a violation of this Agreement, you may report it by sending an email to abuse@iCloud.com.

H. Content Submitted or Made Available by You on the Service

1. License from You. Except for material we may license to you, Apple does not claim ownership of the materials and/or Content you submit or make available on the Service. However, by submitting or posting such Content on areas of the Service that are accessible by the public or other users with whom you consent to share such Content, you grant Apple a worldwide, royalty-free, non-exclusive license to use, distribute, reproduce, modify, adapt, publish, translate, publicly perform and publicly display such Content on the Service solely for the purpose for which such Content was submitted or made available, without any compensation or obligation to you. You agree that any Content submitted or posted by you shall be your sole responsibility, shall not infringe or violate the rights of any other party or violate any laws, contribute to or encourage infringing or otherwise unlawful conduct, or otherwise be obscene, objectionable, or in poor taste. By submitting or posting such Content on areas of the Service that are accessible by the public or other users, you are representing that you are the owner of such material and/or have all necessary rights, licenses, and authorization to distribute it.

2. Changes to Content. You understand that in order to provide the Service and make your Content available thereon, Apple may transmit your Content across various public networks, in various media, and modify or change your Content to comply with technical requirements of connecting networks or devices or computers. You agree that the license herein permits Apple to take any such actions.

3. Trademark Information. Apple, the Apple logo, iCloud, the iCloud logo and other Apple trademarks, service marks, graphics, and logos used in connection with the Service are trademarks or registered trademarks of Apple Inc. in the US and/or other countries. A list of Apple's trademarks can be found here - https://www.apple.com/legal/trademark/appletmlist.html. Other trademarks, service marks, graphics, and logos used in connection with the Service may be the trademarks of their respective owners. You are granted no right or license in any of the aforesaid trademarks, and further agree that you shall not remove, obscure, or alter any proprietary notices (including trademark and copyright notices) that may be affixed to or contained within the Service.

VI. Software

A. Apple's Proprietary Rights. You acknowledge and agree that Apple and/or its licensors own all legal right, title and interest in and to the Service, including but not limited to graphics, user interface, the scripts and software used to implement

the Service, and any software provided to you as a part of and/or in connection with the Service (the "Software"), including any and all intellectual property rights that exist therein, whether registered or not, and wherever in the world they may exist. You further agree that the Service (including the Software, or any other part thereof) contains proprietary and confidential information that is protected by applicable intellectual property and other laws, including but not limited to copyright. You agree that you will not use such proprietary information or materials in any way whatsoever except for use of the Service in compliance with this Agreement. No portion of the Service may be reproduced in any form or by any means, except as expressly permitted in these terms.

B. License From Apple. THE USE OF THE SOFTWARE OR ANY PART OF THE SERVICE, EXCEPT FOR USE OF THE SERVICE AS PERMITTED IN THIS AGREEMENT, IS STRICTLY PROHIBITED AND INFRINGES ON THE INTELLECTUAL PROPERTY RIGHTS OF OTHERS AND MAY SUBJECT YOU TO CIVIL AND CRIMINAL PENALTIES, INCLUDING POSSIBLE MONETARY DAMAGES, FOR COPYRIGHT INFRINGEMENT.

C. Public Beta. From time to time, Apple may choose to offer new and/or updated features of the Service (the "Beta Features") as part of a Public Beta Program (the "Program") for the purpose of providing Apple with feedback on the quality and usability of the Beta Features. You understand and agree that your participation in the Program is voluntary and does not create a legal partnership, agency, or employment relationship between you and Apple, and that Apple is not obligated to provide you with any Beta Features. Apple may make such Beta Features available to Program participants by online registration or enrollment via the Service. You understand and agree that Apple may collect and use information from your Account, devices and peripherals in order to enroll you in a Program and/or determine your eligibility to participate. You understand that once you enroll in a Program you may be unable to revert to the earlier non-beta version of a given Beta Feature. In the event such reversion is possible, you may not be able to migrate data created within the Beta Feature back to the earlier non-beta version. Your use of the Beta Features and participation in the Program is governed by this Agreement and any additional license terms that may separately accompany the Beta Features. The Beta Features are provided on an "AS IS" and "AS AVAILABLE" basis and may contain errors or inaccuracies that could cause failures, corruption or loss of data and/or information from your device and from peripherals (including, without limitation, servers and computers) connected thereto. Apple strongly encourages you to backup all data and information on your device and any peripherals prior to participating in any Program. You expressly

acknowledge and agree that all use of the Beta Features is at your sole risk. YOU ASSUME ALL RISKS AND ALL COSTS ASSOCIATED WITH YOUR PARTICIPATION IN ANY PROGRAM, INCLUDING, WITHOUT LIMITATION, ANY INTERNET ACCESS FEES, BACKUP EXPENSES, COSTS INCURRED FOR THE USE OF YOUR DEVICE AND PERIPHERALS, AND ANY DAMAGE TO ANY EQUIPMENT, SOFTWARE, INFORMATION OR DATA. Apple may or may not provide you with technical and/or other support for the Beta Features. If support is provided it will be in addition to your normal support coverage for the Service and only available through the Program. You agree to abide by any support rules or policies that Apple provides to you in order to receive any such support. Apple reserves the right to modify the terms, conditions or policies of the Program (including ceasing the Program) at any time with or without notice, and may revoke your participation in the Program at any time. You acknowledge that Apple has no obligation to provide a commercial version of the Beta Features, and that should such a commercial version be made available, it may have features or functionality different than that contained in the Beta Features. As part of the Program, Apple will provide you with the opportunity to submit comments, suggestions, or other feedback regarding your use of the Beta Features. You agree that in the absence of a separate written agreement to the contrary, Apple will be free to use any feedback you provide for any purpose.

D. Export Control. Use of the Service and Software, including transferring, posting, or uploading data, software or other Content via the Service, may be subject to the export and import laws of the United States and other countries. You agree to comply with all applicable export and import laws and regulations. In particular, but without limitation, the Software may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Software or Service, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use the Software or Service for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of missiles, nuclear, chemical or biological weapons. You further agree not to upload to your Account any data or software that is: (a) subject to International Traffic in Arms Regulations; or (b) that cannot be exported without prior written government authorization, including, but not limited to, certain types of encryption software and source code, without first obtaining that authorization. This assurance and commitment shall survive termination of this Agreement.

E. Updates. From time to time, Apple may update the Software used by the Service. In order to continue your use of the Service, such updates may be automatically downloaded and installed onto your device or computer. These updates may include bug fixes, feature enhancements or improvements, or entirely new versions of the Software.

VII. Termination

A. Voluntary Termination by You

You may delete your Apple ID and/or stop using the Service at any time. If you wish to stop using iCloud on your device, you may disable iCloud from a device by opening Settings on your device, tapping iCloud, and tapping ”Sign Out”. To terminate your Account and delete your Apple ID, contact Apple Support at https://support.apple.com/contact. If you terminate your Account and delete your Apple ID, you will not have access to other Apple or third party products and services that you set up with that Apple ID. This action may be non-reversible. Any fees paid by you prior to your termination are nonrefundable (except as expressly permitted otherwise by this Agreement), including any fees paid in advance for the billing year during which you terminate. Termination of your Account shall not relieve you of any obligation to pay any accrued fees or charges.

B. Termination by Apple

Apple may at any time, under certain circumstances and without prior notice, immediately terminate or suspend all or a portion of your Account and/or access to the Service. Cause for such termination shall include: (a) violations of this Agreement or any other policies or guidelines that are referenced herein and/or posted on the Service; (b) a request by you to cancel or terminate your Account; (c) a request and/or order from law enforcement, a judicial body, or other government agency; (d) where provision of the Service to you is or may become unlawful; (e) unexpected technical or security issues or problems; (f) your participation in fraudulent or illegal activities; or (g) failure to pay any fees owed by you in relation to the Service, provided that in the case of non-material breach, Apple will be permitted to terminate only after giving you 30 days’ notice and only if you have not cured the breach within such 30-day period. Any such termination or suspension shall be made by Apple in its sole discretion and Apple will not be responsible to you or any third party for any damages that may result or arise out of such termination or suspension of your Account and/or access to the Service. In addition, Apple may terminate your Account upon 30 days’ prior notice via email to the address associated with your Account if (a) your Account has been inactive

for one (1) year; or (b) there is a general discontinuance of the Service or any part thereof. Notice of general discontinuance of service will be provided as set forth herein, unless it would not be reasonable to do so due to circumstances arising from legal, regulatory, or governmental action; to address user security, user privacy, or technical integrity concerns; to avoid service disruptions to other users; or due to a natural disaster, a catastrophic event, war, or other similar occurrence outside of Apple's reasonable control. In the event of such termination, Apple will provide you with a pro rata refund of any pre-payment for your then-current paid term. Apple shall not be liable to you for any modifications to the Service or terms of service in accordance with this Section VIIB.

C. Effects of Termination

Upon termination of your Account you may lose all access to the Service and any portions thereof, including, but not limited to, your Account, Apple ID, email account, and Content. In addition, after a period of time, Apple will delete information and data stored in or as a part of your account(s). Any individual components of the Service that you may have used subject to separate software license agreements will also be terminated in accordance with those license agreements.

VIII. Links and Other Third Party Materials

Certain Content, components or features of the Service may include materials from third parties and/or hyperlinks to other web sites, resources or Content. Because Apple may have no control over such third party sites and/or materials, you acknowledge and agree that Apple is not responsible for the availability of such sites or resources, and does not endorse or warrant the accuracy of any such sites or resources, and shall in no way be liable or responsible for any Content, advertising, products or materials on or available from such sites or resources. You further acknowledge and agree that Apple shall not be responsible or liable in any way for any damages you incur or allege to have incurred, either directly or indirectly, as a result of your use and/or reliance upon any such Content, advertising, products or materials on or available from such sites or resources.

IX. DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, AS SUCH, TO THE EXTENT SUCH EXCLUSIONS ARE SPECIFICALLY PROHIBITED BY APPLICABLE LAW, SOME OF THE EXCLUSIONS SET FORTH BELOW MAY NOT APPLY TO YOU.

APPLE SHALL USE REASONABLE SKILL AND DUE CARE IN PROVIDING THE SERVICE. THE FOLLOWING DISCLAIMERS ARE SUBJECT TO THIS EXPRESS WARRANTY.

APPLE DOES NOT GUARANTEE, REPRESENT, OR WARRANT THAT YOUR USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, AND YOU AGREE THAT FROM TIME TO TIME APPLE MAY REMOVE THE SERVICE FOR INDEFINITE PERIODS OF TIME, OR CANCEL THE SERVICE IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT.

YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. APPLE AND ITS AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. IN PARTICULAR, APPLE AND ITS AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS MAKE NO WARRANTY THAT (I) THE SERVICE WILL MEET YOUR REQUIREMENTS; (II) YOUR USE OF THE SERVICE WILL BE TIMELY, UNINTERRUPTED, SECURE OR ERROR-FREE; (III) ANY INFORMATION OBTAINED BY YOU AS A RESULT OF THE SERVICE WILL BE ACCURATE OR RELIABLE; AND (IV) ANY DEFECTS OR ERRORS IN THE SOFTWARE PROVIDED TO YOU AS PART OF THE SERVICE WILL BE CORRECTED.

APPLE DOES NOT REPRESENT OR GUARANTEE THAT THE SERVICE WILL BE FREE FROM LOSS, CORRUPTION, ATTACK, VIRUSES, INTERFERENCE, HACKING, OR OTHER SECURITY INTRUSION, AND APPLE DISCLAIMS ANY LIABILITY RELATING THERETO.

ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS ACCESSED AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR DEVICE, COMPUTER, OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL. YOU FURTHER ACKNOWLEDGE THAT THE SERVICE IS NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE THE FAILURE OR TIME DELAYS OF, OR ERRORS OR INACCURACIES IN, THE

CONTENT, DATA OR INFORMATION PROVIDED BY THE SERVICE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

LIMITATION OF LIABILITY

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY BY SERVICE PROVIDERS. TO THE EXTENT SUCH EXCLUSIONS OR LIMITATIONS ARE SPECIFICALLY PROHIBITED BY APPLICABLE LAW, SOME OF THE EXCLUSIONS OR LIMITATIONS SET FORTH BELOW MAY NOT APPLY TO YOU.

APPLE SHALL USE REASONABLE SKILL AND DUE CARE IN PROVIDING THE SERVICE. THE FOLLOWING LIMITATIONS DO NOT APPLY IN RESPECT OF LOSS RESULTING FROM (A) APPLE'S FAILURE TO USE REASONABLE SKILL AND DUE CARE; (B) APPLE'S GROSS NEGLIGENCE, WILFUL MISCONDUCT OR FRAUD; OR (C) DEATH OR PERSONAL INJURY.

YOU EXPRESSLY UNDERSTAND AND AGREE THAT APPLE AND ITS AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR OTHER INTANGIBLE LOSSES (EVEN IF APPLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (I) THE USE OR INABILITY TO USE THE SERVICE (II) ANY CHANGES MADE TO THE SERVICE OR ANY TEMPORARY OR PERMANENT CESSATION OF THE SERVICE OR ANY PART THEREOF; (III) THE UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (IV) THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE AND/OR SEND OR RECEIVE YOUR TRANSMISSIONS OR DATA ON OR THROUGH THE SERVICE; (V) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; AND (VI) ANY OTHER MATTER RELATING TO THE SERVICE.

INDEMNIFICATION

You agree to defend, indemnify and hold Apple, its affiliates, subsidiaries, directors, officers, employees, agents, partners, contractors, and licensors harmless from any claim or demand, including reasonable attorneys' fees, made by a third party, relating to or arising from: (a) any Content you submit, post, transmit, or otherwise make available through the Service; (b) your use of the Service; (c) any violation by you of this Agreement; (d) any action taken by Apple as part of its investigation of a suspected violation of this Agreement or as a result of its finding or decision that a violation of this Agreement has occurred; or (e) your violation of any rights of another. This means that you cannot sue Apple, its affiliates, subsidiaries, directors, officers, employees, agents, partners, contractors, and licensors as a result of its decision to remove or refuse to process any information or Content, to warn you, to suspend or terminate your access to the Service, or to take any other action during the investigation of a suspected violation or as a result of Apple's conclusion that a violation of this Agreement has occurred. This waiver and indemnity provision applies to all violations described in or contemplated by this Agreement. This obligation shall survive the termination or expiration of this Agreement and/or your use of the Service. You acknowledge that you are responsible for all use of the Service using your Account, and that this Agreement applies to any and all usage of your Account. You agree to comply with this Agreement and to defend, indemnify and hold harmless Apple from and against any and all claims and demands arising from usage of your Account, whether or not such usage is expressly authorized by you.

X. GENERAL

A. Notices

Apple may provide you with notices regarding the Service, including changes to this Agreement, by email to your iCloud email address (and/or other alternate email address associated with your Account if provided), iMessage or SMS, by regular mail, or by postings on our website and/or the Service.

B. Governing Law

Except to the extent expressly provided in the following paragraph, this Agreement and the relationship between you and Apple shall be governed by the laws of the State of California, excluding its conflicts of law provisions. You and Apple agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Santa Clara, California, to resolve any dispute or claim arising from this Agreement. If (a) you are not a U.S. citizen; (b) you do not reside in the U.S.; (c) you are not accessing the Service from the U.S.; and (d) you are a citizen of one of

the countries identified below, you hereby agree that any dispute or claim arising from this Agreement shall be governed by the applicable law set forth below, without regard to any conflict of law provisions, and you hereby irrevocably submit to the non-exclusive jurisdiction of the courts located in the state, province or country identified below whose law governs:

If you are a citizen of any European Union country or Switzerland, Norway or Iceland, the governing law and forum shall be the laws and courts of your usual place of residence.

If you are a citizen of Japan, the governing law shall be Japanese law and the forum shall be Tokyo, Japan.

Specifically excluded from application to this Agreement is that law known as the United Nations Convention on the International Sale of Goods.

C. Entire Agreement

This Agreement constitutes the entire agreement between you and Apple, governs your use of the Service and completely replaces any prior agreements between you and Apple in relation to the Service. You may also be subject to additional terms and conditions that may apply when you use affiliate services, third-party content, or third-party software. If any part of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. The failure of Apple to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. You agree that, except as otherwise expressly provided in this Agreement, there shall be no third-party beneficiaries to this agreement.

D. "Apple" as used herein means:

• Apple Inc., located at One Apple Park Way, Cupertino, California, for users in North, Central, and South America (excluding Canada), as well as United States territories and possessions; and French and British possessions in North America, South America, and the Caribbean;

• Apple Canada Inc., located at 120 Bremner Blvd., Suite 1600, Toronto ON M5J 0A8, Canada for users in Canada or its territories and possessions;

• iTunes K.K., located at Roppongi Hills, 6-10-1 Roppongi, Minato-ku, Tokyo 106-6140, Tokyo for users in Japan with regard to Section III, IX and X of this Agreement. With respect to all other terms of this Agreement including Section IX and X, for users in Japan "Apple" as used herein means Apple Inc., located at 1 Infinite Loop, Cupertino, California.

• Apple Pty Limited, located at Levels 2-B, 20 Martin Place, Sydney NSW 2000, Australia, for users in Australia, New Zealand, including island possessions, territories, and affiliated jurisdictions; and

• Apple Distribution International Ltd., located at Hollyhill Industrial Estate, Hollyhill, Cork, Republic of Ireland, for all other users.

ELECTRONIC CONTRACTING

Your use of the Service includes the ability to enter into agreements and/or to make transactions electronically. YOU ACKNOWLEDGE THAT YOUR ELECTRONIC SUBMISSIONS CONSTITUTE YOUR AGREEMENT AND INTENT TO BE BOUND BY AND TO PAY FOR SUCH AGREEMENTS AND TRANSACTIONS. YOUR AGREEMENT AND INTENT TO BE BOUND BY ELECTRONIC SUBMISSIONS APPLIES TO ALL RECORDS RELATING TO ALL TRANSACTIONS YOU ENTER INTO ON THIS SERVICE, INCLUDING NOTICES OF CANCELLATION, POLICIES, CONTRACTS, AND APPLICATIONS. In order to access and retain your electronic records, you may be required to have certain hardware and software, which are your sole responsibility.

Last revised: September 19, 2019

Instagram
https://help.instagram.com/478745558852511/

Welcome to Instagram!

These Terms of Use govern your use of Instagram and provide information about the Instagram Service, outlined below. When you create an Instagram account or use Instagram, you agree to these terms.

The Instagram Service is one of the Facebook Products, provided to you by Facebook, Inc. These Terms of Use therefore constitute an agreement between you and Facebook, Inc.

ARBITRATION NOTICE: YOU AGREE THAT DISPUTES BETWEEN YOU AND US WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION. WE EXPLAIN SOME EXCEPTIONS AND HOW YOU CAN OPT OUT OF ARBITRATION BELOW.

The Instagram Service

We agree to provide you with the Instagram Service. The Service includes all of the Instagram products, features, applications, services, technologies, and software that we provide to advance Instagram's mission: To bring you closer to the people and things you love. The Service is made up of the following aspects (the Service):

- **Offering personalized opportunities to create, connect, communicate, discover, and share.**
  People are different. We want to strengthen your relationships through shared experiences you actually care about. So we build systems that try to understand who and what you and others care about, and use that information to help you create, find, join, and share in experiences that matter to you. Part of that is highlighting content, features, offers, and accounts you might be interested in, and offering ways for you to experience Instagram, based on things you and others do on and off Instagram.

- **Fostering a positive, inclusive, and safe environment.**
  We develop and use tools and offer resources to our community members that help to make their experiences positive and inclusive, including when we think they might need help. We also have teams and systems that work to

combat abuse and violations of our Terms and policies, as well as harmful and deceptive behavior. We use all the information we have-including your information-to try to keep our platform secure. We also may share information about misuse or harmful content with other Facebook Companies or law enforcement. Learn more in the Data Policy.

- **Developing and using technologies that help us consistently serve our growing community.**
  Organizing and analyzing information for our growing community is central to our Service. A big part of our Service is creating and using cutting-edge technologies that help us personalize, protect, and improve our Service on an incredibly large scale for a broad global community. Technologies like artificial intelligence and machine learning give us the power to apply complex processes across our Service. Automated technologies also help us ensure the functionality and integrity of our Service.

- **Providing consistent and seamless experiences across other Facebook Company Products.**
  Instagram is part of the Facebook Companies, which share technology, systems, insights, and information-including the information we have about you (learn more in the Data Policy) in order to provide services that are better, safer, and more secure. We also provide ways to interact across the Facebook Company Products that you use, and designed systems to achieve a seamless and consistent experience across the Facebook Company Products.

- **Ensuring a stable global infrastructure for our Service.**
  To provide our global Service, we must store and transfer data across our systems around the world, including outside of your country of residence. This infrastructure may be owned or operated by Facebook Inc., Facebook Ireland Limited, or their affiliates.

- **Connecting you with brands, products, and services in ways you care about.**
  We use data from Instagram and other Facebook Company Products, as well as from third-party partners, to show you ads, offers, and other sponsored content that we believe will be meaningful to you. And we try to make that content as relevant as all your other experiences on Instagram.

- **Research and innovation.**
  We use the information we have to study our Service and collaborate with

others on research to make our Service better and contribute to the well-being of our community.

The Data Policy

Providing our Service requires collecting and using your information. The Data Policy explains how we collect, use, and share information across the Facebook Products. It also explains the many ways you can control your information, including in the Instagram Privacy and Security Settings. You must agree to the Data Policy to use Instagram.

Your Commitments

In return for our commitment to provide the Service, we require you to make the below commitments to us.

Who Can Use Instagram. We want our Service to be as open and inclusive as possible, but we also want it to be safe, secure, and in accordance with the law. So, we need you to commit to a few restrictions in order to be part of the Instagram community.

- You must be at least 13 years old.
- You must not be prohibited from receiving any aspect of our Service under applicable laws or engaging in payments related Services if you are on an applicable denied party listing.
- We must not have previously disabled your account for violation of law or any of our policies.
- You must not be a convicted sex offender.

How You Can't Use Instagram. Providing a safe and open Service for a broad community requires that we all do our part.

- **You can't impersonate others or provide inaccurate information.** You don't have to disclose your identity on Instagram, but you must provide us with accurate and up to date information (including registration information). Also, you may not impersonate someone you aren't, and you

can't create an account for someone else unless you have their express permission.

- **You can't do anything unlawful, misleading, or fraudulent or for an illegal or unauthorized purpose.**
- **You can't violate (or help or encourage others to violate) these Terms or our policies, including in particular the Instagram Community Guidelines, Instagram Platform Policy, and Music Guidelines.** Learn how to report conduct or content in our Help Center.
- **You can't do anything to interfere with or impair the intended operation of the Service.**
- **You can't attempt to create accounts or access or collect information in unauthorized ways.**
  This includes creating accounts or collecting information in an automated way without our express permission.
- **You can't attempt to buy, sell, or transfer any aspect of your account (including your username) or solicit, collect, or use login credentials or badges of other users.**
- **You can't post private or confidential information or do anything that violates someone else's rights, including intellectual property.**
  Learn more, including how to report content that you think infringes your intellectual property rights, here.
- **You can't use a domain name or URL in your username without our prior written consent.**

Permissions You Give to Us. As part of our agreement, you also give us permissions that we need to provide the Service.

- **We do not claim ownership of your content, but you grant us a license to use it.**
  Nothing is changing about your rights in your content. We do not claim ownership of your content that you post on or through the Service. Instead, when you share, post, or upload content that is covered by intellectual property rights (like photos or videos) on or in connection with our Service, you hereby grant to us a non-exclusive, royalty-free, transferable, sub-licensable, worldwide license to host, use, distribute, modify, run, copy,

publicly perform or display, translate, and create derivative works of your content (consistent with your privacy and application settings). You can end this license anytime by deleting your content or account. However, content will continue to appear if you shared it with others and they have not deleted it. To learn more about how we use information, and how to control or delete your content, review the Data Policy and visit the Instagram Help Center.

- **Permission to use your username, profile picture, and information about your relationships and actions with accounts, ads, and sponsored content.**
  You give us permission to show your username, profile picture, and information about your actions (such as likes) or relationships (such as follows) next to or in connection with accounts, ads, offers, and other sponsored content that you follow or engage with that are displayed on Facebook Products, without any compensation to you. For example, we may show that you liked a sponsored post created by a brand that has paid us to display its ads on Instagram. As with actions on other content and follows of other accounts, actions on sponsored content and follows of sponsored accounts can be seen only by people who have permission to see that content or follow. We will also respect your ad settings. You can learn more here about your ad settings.

- **You agree that we can download and install updates to the Service on your device.**

Additional Rights We Retain

- If you select a username or similar identifier for your account, we may change it if we believe it is appropriate or necessary (for example, if it infringes someone's intellectual property or impersonates another user).

- If you use content covered by intellectual property rights that we have and make available in our Service (for example, images, designs, videos, or sounds we provide that you add to content you create or share), we retain all rights to our content (but not yours).

- You can only use our intellectual property and trademarks or similar marks as expressly permitted by our Brand Guidelines or with our prior written permission.

- You must obtain written permission from us or under an open source license to modify, create derivative works of, decompile, or otherwise attempt to extract source code from us.

Content Removal and Disabling or Terminating Your Account

- We can remove any content or information you share on the Service if we believe that it violates these Terms of Use, our policies (including our Instagram Community Guidelines), or we are permitted or required to do so by law. We can refuse to provide or stop providing all or part of the Service to you (including terminating or disabling your account) immediately to protect our community or services, or if you create risk or legal exposure for us, violate these Terms of Use or our policies (including our Instagram Community Guidelines), if you repeatedly infringe other people's intellectual property rights, or where we are permitted or required to do so by law. If you believe your account has been terminated in error, or you want to disable or permanently delete your account, consult our Help Center.

- Content you delete may persist for a limited period of time in backup copies and will still be visible where others have shared it. This paragraph, and the section below called "Our Agreement and What Happens if We Disagree," will still apply even after your account is terminated or deleted.

Our Agreement and What Happens if We Disagree

Our Agreement.

- Your use of music on the Service is also subject to our Music Guidelines, and your use of our API is subject to our Platform Policy. If you use certain other features or related services, you will be provided with an opportunity to agree to additional terms that will also become a part of our agreement. For example, if you use payment features, you will be asked to agree to the Community Payment Terms. If any of those terms conflict with this agreement, those other terms will govern.

- If any aspect of this agreement is unenforceable, the rest will remain in effect.

- Any amendment or waiver to our agreement must be in writing and signed by us. If we fail to enforce any aspect of this agreement, it will not be a waiver.

- We reserve all rights not expressly granted to you.

Who Has Rights Under this Agreement.

- This agreement does not give rights to any third parties.

- You cannot transfer your rights or obligations under this agreement without our consent.

- Our rights and obligations can be assigned to others. For example, this could occur if our ownership changes (as in a merger, acquisition, or sale of assets) or by law.

Who Is Responsible if Something Happens.

- Our Service is provided "as is," and we can't guarantee it will be safe and secure or will work perfectly all the time. TO THE EXTENT PERMITTED BY LAW, WE ALSO DISCLAIM ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

- We also don’t control what people and others do or say, and we aren’t responsible for their (or your) actions or conduct (whether online or offline) or content (including unlawful or objectionable content). We also aren’t responsible for services and features offered by other people or companies, even if you access them through our Service.

- Our responsibility for anything that happens on the Service (also called "liability") is limited as much as the law will allow. If there is an issue with our Service, we can't know what all the possible impacts might be. You agree that we won't be responsible ("liable") for any lost profits, revenues, information, or data, or consequential, special, indirect, exemplary, punitive, or incidental damages arising out of or related to these Terms, even if we know they are possible. This includes when we delete your content, information, or account. Our aggregate liability arising out of or relating to these Terms will not exceed the greater of $100 or the amount you have paid us in the past twelve months.

- You agree to defend (at our request), indemnify and hold us harmless from and against any claims, liabilities, damages, losses, and expenses, including without limitation, reasonable attorney's fees and costs, arising out of or in any way connected with these Terms or your use of the Service. You will cooperate as required by us in the defense of any claim. We reserve the right to assume the exclusive defense and control of any matter subject to indemnification by you, and you will not in any event settle any claim without our prior written consent.

How We Will Handle Disputes.

- Except as provided below, you and we agree that any cause of action, legal claim, or dispute between you and us arising out of or related to these Terms or Instagram ("claim(s)") must be resolved by arbitration on an individual basis. Class actions and class arbitrations are not permitted; you and we may bring a claim only on your own behalf and cannot seek relief that would affect other Instagram users. If there is a final judicial determination that any particular claim (or a request for particular relief) cannot be arbitrated in accordance with this provision's limitations, then only that claim (or only that request for relief) may be brought in court. All other claims (or requests for relief) remain subject to this provision.

- Instead of using arbitration, you or we can bring claims in your local "small claims" court, if the rules of that court will allow it. If you don't bring your claims in small claims court (or if you or we appeal a small claims court judgment to a court of general jurisdiction), then the claims must be resolved by binding, individual arbitration. The American Arbitration Association will administer all arbitrations under its Consumer Arbitration Rules. You and we expressly waive a trial by jury.

The following claims don't have to be arbitrated and may be brought in court: disputes related to intellectual property (like copyrights and trademarks), violations of our Platform Policy, or efforts to interfere with the Service or engage with the Service in unauthorized ways (for example, automated ways). In addition, issues relating to the scope and enforceability of the arbitration provision are for a court to decide.

This arbitration provision is governed by the Federal Arbitration Act.

You can opt out of this provision within 30 days of the date that you agreed to these Terms. To opt out, you must send your name, residence address, username,

email address or phone number you use for your Instagram account, and a clear statement that you want to opt out of this arbitration agreement, and you must send them here: Facebook, Inc. ATTN: Instagram Arbitration Opt-out, 1601 Willow Rd., Menlo Park, CA 94025.

- Before you commence arbitration of a claim, you must provide us with a written Notice of Dispute that includes your name, residence address, username, email address or phone number you use for your Instagram account, a detailed description of the dispute, and the relief you seek. Any Notice of Dispute you send to us should be mailed to Facebook, Inc., ATTN: Instagram Arbitration Filing, 1601 Willow Rd. Menlo Park, CA 94025. Before we commence arbitration, we will send you a Notice of Dispute to the email address you use with your Instagram account, or other appropriate means. If we are unable to resolve a dispute within thirty (30) days after the Notice of Dispute is received, you or we may commence arbitration.

- We will pay all arbitration filing fees, administration and hearing costs, and arbitrator fees for any arbitration we bring or if your claims seek less than $75,000 and you timely provided us with a Notice of Dispute. For all other claims, the costs and fees of arbitration shall be allocated in accordance with the arbitration provider's rules, including rules regarding frivolous or improper claims.

- For any claim that is not arbitrated or resolved in small claims court, you agree that it will be resolved exclusively in the U.S. District Court for the Northern District of California or a state court located in San Mateo County. You also agree to submit to the personal jurisdiction of either of these courts for the purpose of litigating any such claim.

- The laws of the State of California, to the extent not preempted by or inconsistent with federal law, will govern these Terms and any claim, without regard to conflict of law provisions.

Unsolicited Material.

We always appreciate feedback or other suggestions, but may use them without any restrictions or obligation to compensate you for them, and are under no obligation to keep them confidential.

Updating These Terms

We may change our Service and policies, and we may need to make changes to these Terms so that they accurately reflect our Service and policies. Unless otherwise required by law, we will notify you (for example, through our Service) before we make changes to these Terms and give you an opportunity to review them before they go into effect. Then, if you continue to use the Service, you will be bound by the updated Terms. If you do not want to agree to these or any updated Terms, you can delete your account, here.

Revised: April 19, 2018

LinkedIn
https://www.linkedin.com/legal/user-agreement

1. Introduction

1.1 Contract

When you use our Services you agree to all of these terms. Your use of our Services is also subject to our **Cookie Policy** and our **Privacy Policy**, which covers how we collect, use, share, and store your personal information.

You agree that by clicking "Join Now", "Join LinkedIn", "Sign Up" or similar, registering, accessing or using our services (described below), **you are agreeing to enter into a legally binding contract** with LinkedIn (even if you are using our Services on behalf of a company). If you do not agree to this contract ("Contract" or "User Agreement"), do **not** click "Join Now" (or similar) and do not access or otherwise use any of our Services. If you wish to terminate this contract, at any time you can do so by closing your account and no longer accessing or using our Services.

Services

This Contract applies to LinkedIn.com, LinkedIn-branded apps, Slideshare, LinkedIn Learning and other LinkedIn-related sites, apps, communications and other services that state that they are offered under this Contract ("Services"), including the offsite collection of data for those Services, such as our ads and the "Apply with LinkedIn" and "Share with LinkedIn" plugins. Registered users of our Services are "Members" and unregistered users are "Visitors".

LinkedIn

You are entering into this Contract with LinkedIn (also referred to as "we" and "us").

We use the term "Designated Countries" to refer to countries in the European Union (EU), European Economic Area (EEA), and Switzerland.

If you reside in the "Designated Countries", you are entering into this Contract with LinkedIn Ireland Unlimited Company ("LinkedIn Ireland") and LinkedIn Ireland will be the controller of your personal data provided to, or collected by or for, or processed in connection with our Services.

If you reside outside of the "Designated Countries", you are entering into this Contract with LinkedIn Corporation ("LinkedIn Corp.") and LinkedIn Corp. will be the controller of your personal data provided to, or collected by or for, or processed in connection with our Services.

This Contract applies to Members and Visitors.

As a Visitor or Member of our Services, the collection, use and sharing of your personal data is subject to this **Privacy Policy** (which includes our **Cookie Policy** and other documents referenced in this Privacy Policy) and updates.

1.2 Members and Visitors

When you register and join the LinkedIn Service or become a registered user on SlideShare, you become a Member. If you have chosen not to register for our Services, you may access certain features as a "Visitor."

1.3 Change

We may make changes to the Contract.

We may modify this Contract, our Privacy Policy and our Cookies Policy from time to time. If we make material changes to it, we will provide you notice through our Services, or by other means, to provide you the opportunity to review the changes before they become effective. We agree that changes cannot be retroactive. If you object to any changes, you may **close your account**. Your continued use of our Services after we publish or send a notice about our changes to these terms means that you are consenting to the updated terms as of their effective date.

2. Obligations

2.1 Service Eligibility

Here are some promises that you make to us in this Contract:

You're eligible to enter into this Contract and you are at least our "Minimum Age."

The Services are not for use by anyone under the age of 16.

To use the Services, you agree that: (1) you must be the "*Minimum Age*" (described below) or older; (2) you will only have one LinkedIn account, which must be in your real name; and (3) you are not already restricted by LinkedIn from using the Services. Creating an account with false information is a violation of our terms, including accounts registered on behalf of others or persons under the age of 16.

"Minimum Age" means 16 years old. However, if law requires that you must be older in order for LinkedIn to lawfully provide the Services to you without parental consent (including using of your personal data) then the Minimum Age is such older age.

2.2 Your Account

You will keep your password a secret.

You will not share an account with anyone else and will follow our rules and the law.

Members are account holders. You agree to: (1) use a strong password and keep it confidential; (2) not transfer any part of your account (e.g., connections) and (3) follow the law and our list of Dos and Don'ts and **Professional Community Policies**. You are responsible for anything that happens through your account unless you close it or report misuse.

As between you and others (including your employer), your account belongs to you. However, if the Services were purchased by another party for you to use (e.g. Recruiter seat bought by your employer), the party paying for such Service has the right to control access to and get reports on your use of such paid Service; however, they do not have rights to your personal account.

2.3 Payment

You'll honor your payment obligations and you are okay with us storing your payment information. You understand that there may be fees and taxes that are added to our prices.

Refunds are subject to our policy.

If you buy any of our paid Services ("Premium Services"), you agree to pay us the applicable fees and taxes and to **additional terms** specific to the paid Services. Failure to pay these fees will result in the termination of your paid Services. Also, you agree that:

- Your purchase may be subject to foreign exchange fees or differences in prices based on location (e.g. exchange rates).
- We may store and continue billing your payment method (e.g. credit card) even after it has expired, to avoid interruptions in your Services and to use to pay other Services you may buy.
- If you purchase a subscription, your payment method automatically will be charged at the start of each subscription period for the fees and taxes applicable to that period. To avoid future charges, cancel before the renewal date. Learn how to **cancel or suspend** your Premium Services.
- All of your purchases of Services are subject to LinkedIn's **refund policy**.
- We may calculate taxes payable by you based on the billing information that you provide us at the time of purchase.

You can get a copy of your invoice through your LinkedIn account settings under "**Purchase History**".

2.4 Notices and Messages

You're okay with us providing notices and messages to you through our websites, apps, and contact information. If your contact information is out of date, you may miss out on important notices.

You agree that we will provide notices and messages to you in the following ways: (1) within the Service, or (2) sent to the contact information you provided us (e.g., email, mobile number, physical address). You agree to keep your **contact information** up to date.

Please review your settings to **control and limit** messages you receive from us.

2.5 Sharing

When you share information on our Services, others can see, copy and use that information.

Our Services allow messaging and sharing of information in many ways, such as your profile, articles, group posts, links to news articles, job postings, messages and InMails. Information and content that you share or post may be seen by other Members, Visitors or others (including off of the Services). Where we have made settings available, we will honor the choices you make about who can see content or information (e.g., message content to your addressees, sharing content only to LinkedIn connections, restricting your profile visibility from search engines, or opting not to notify others of your LinkedIn profile update). For job searching activities, we default to not notifying your connections network or the public. So, if you apply for a job through our Service or opt to signal that you are interested in a job, our default is to share it only with the job poster.

We are not obligated to publish any information or content on our Service and can remove it with or without notice.

3. Rights and Limits

3.1. Your License to LinkedIn

You own all of the content, feedback and personal information you provide to us, but you also grant us a non-exclusive license to it.

We'll honor the choices you make about who gets to see your information and content, including how it can be used for ads.

As between you and LinkedIn, you own the content and information that you submit or post to the Services, and you are only granting LinkedIn and our *affiliates* the following non-exclusive license:

A worldwide, transferable and sublicensable right to use, copy, modify, distribute, publish and process, information and content that you provide through our Services and the services of others, without any further consent, notice and/or compensation to you or others. These rights are limited in the following ways:

1. You can end this license for specific content by deleting such content from the Services, or generally by closing your account, except (a) to the extent you shared it with others as part of the Service and they copied, re-shared it or stored it and (b) for the reasonable time it takes to remove from backup and other systems.

2. We will not include your content in advertisements for the products and services of third parties to others without your separate consent (including sponsored content). However, we have the right, without payment to you or others, to serve ads near your content and information, and your *social actions* may be visible and included with ads, as noted in the Privacy Policy. If you use a Service feature, we may mention that with your name or photo to promote that feature within our Services, subject to your settings.

3. We will get your consent if we want to give others the right to publish your content beyond the Services. However, if you choose to share your post as "*public*", we will enable a feature that allows other Members to embed that public post onto third-party services, and we enable search engines to make that public content findable though their services. **Learn More**

4. While we may edit and make format changes to your content (such as translating or transcribing it, modifying the size, layout or file type or removing metadata), we will not modify the meaning of your expression.

5. Because you own your content and information and we only have non-exclusive rights to it, you may choose to make it available to others, including under the terms of a **Creative Commons license**.

You and LinkedIn agree that if content includes personal data, it is subject to our Privacy Policy.

You and LinkedIn agree that we may access, store, process and use any information and personal data that you provide in accordance with, the terms of the **Privacy Policy** and your choices (including settings).

By submitting suggestions or other feedback regarding our Services to LinkedIn, you agree that LinkedIn can use and share (but does not have to) such feedback for any purpose without compensation to you.

You promise to only provide information and content that you have the right to share, and that your LinkedIn profile will be truthful.

You agree to only provide content or information that does not violate the law nor anyone's rights (including intellectual property rights). You also agree that your profile information will be truthful. LinkedIn may be required by law to remove certain information or content in certain countries.

3.2 Service Availability

We may change or end any Service or modify our prices prospectively.

We may change, suspend or discontinue any of our Services. We may also modify our prices effective prospectively upon reasonable notice to the extent allowed under the law.

We don't promise to store or keep showing any information and content that you've posted. LinkedIn is not a storage service. You agree that we have no obligation to store, maintain or provide you a copy of any content or information that you or others provide, except to the extent required by applicable law and as noted in our Privacy Policy.

3.3 Other Content, Sites and Apps

Your use of others' content and information posted on our Services, is at your own risk.

Others may offer their own products and services through our Services, and we aren't responsible for those third-party activities.

By using the Services, you may encounter content or information that might be inaccurate, incomplete, delayed, misleading, illegal, offensive or otherwise harmful. LinkedIn generally does not review content provided by our Members or others. You agree that we are not responsible for others' (including other Members') content or information. We cannot always prevent this misuse of our Services, and you agree that we are not responsible for any such misuse. You also acknowledge the risk that you or your organization may be mistakenly associated with content about others when we let connections and followers know you or your organization were mentioned in the news. Members have **choices** about this **feature**.

LinkedIn may help connect Members offering their services (career coaching, accounting, etc.) with Members seeking services. LinkedIn does not perform nor employs individuals to perform these services. You must be at least 18 years of age to offer, perform or procure these services. You acknowledge that LinkedIn does not supervise, direct, control or monitor Members in the performance of these services and agree that (1) LinkedIn is not responsible for the offering, performance or procurement of these services, (2) LinkedIn does not endorse any particular Member's offered services, and (3) nothing shall create an employment, agency, or joint venture relationship between LinkedIn and any Member offering services. If you are a Member offering services, you represent and warrant that you have all the required licenses and will provide services consistent with our **Professional Community Policies**.

Similarly, LinkedIn may help you register for and/or attend events organized by Members and connect with other Members who are attendees at such events. You agree that (1) LinkedIn is not responsible for the conduct of any of the Members or other attendees at such events, (2) LinkedIn does not endorse any particular event listed on our Services, (3) LinkedIn does not review and/or vet any of these events, and (4) that you will adhere to these terms and conditions that apply to such events.

3.4 Limits

We have the right to limit how you connect and interact on our Services.

LinkedIn reserves the right to limit your use of the Services, including the number of your connections and your ability to contact other Members. LinkedIn reserves the right to restrict, suspend, or terminate your account if you breach this Contract or the law or are misusing the Services (e.g., violating any of the Dos and Don'ts or **Professional Community Policies**).

3.5 Intellectual Property Rights

We're providing you notice about our intellectual property rights.

LinkedIn reserves all of its intellectual property rights in the Services. Trademarks and logos used in connection with the Services are the trademarks of their respective owners. LinkedIn, and "in" logos and other LinkedIn trademarks, service marks, graphics and logos used for our Services are trademarks or registered trademarks of LinkedIn.

3.6 Automated Processing

We use data and information about you to make relevant suggestions to you and others.

We use the information and data that you provide and that we have about Members to make recommendations for connections, content and features that may be useful to you. For example, we use data and information about you to recommend jobs to you and you to recruiters. Keeping your profile accurate and up to date helps us to make these recommendations more accurate and relevant.

4. Disclaimer and Limit of Liability

4.1 No Warranty

This is our disclaimer of legal liability for the quality, safety, or reliability of our Services.

LINKEDIN AND ITS AFFILIATES MAKE NO REPRESENTATION OR WARRANTY ABOUT THE SERVICES, INCLUDING ANY REPRESENTATION THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, AND PROVIDE THE SERVICES (INCLUDING CONTENT AND INFORMATION) ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, LINKEDIN AND ITS AFFILIATES DISCLAIM ANY IMPLIED OR STATUTORY WARRANTY, INCLUDING ANY IMPLIED WARRANTY OF TITLE, ACCURACY OF DATA, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

4.2 Exclusion of Liability

These are the limits of legal liability we may have to you.

TO THE FULLEST EXTENT PERMITTED BY LAW (AND UNLESS LINKEDIN HAS ENTERED INTO A SEPARATE WRITTEN AGREEMENT THAT OVERRIDES THIS CONTRACT), LINKEDIN, INCLUDING ITS AFFILIATES, WILL NOT BE LIABLE IN CONNECTION WITH THIS CONTRACT FOR LOST PROFITS OR LOST BUSINESS OPPORTUNITIES, REPUTATION (E.G., OFFENSIVE OR DEFAMATORY STATEMENTS), LOSS OF DATA (E.G., DOWN TIME OR LOSS, USE OF, OR CHANGES TO, YOUR INFORMATION OR CONTENT) OR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES.

LINKEDIN AND ITS AFFILIATES WILL NOT BE LIABLE TO YOU IN CONNECTION WITH THIS CONTRACT FOR ANY AMOUNT THAT EXCEEDS (A) THE TOTAL FEES PAID OR PAYABLE BY YOU TO LINKEDIN FOR THE SERVICES DURING THE TERM OF THIS CONTRACT, IF ANY, OR (B) US $1000.

4.3 Basis of the Bargain; Exclusions

The limitations of liability in this Section 4 are part of the basis of the bargain between you and LinkedIn and shall apply to all claims of liability (e.g., warranty, tort, negligence, contract and

law) even if LinkedIn or its affiliates has been told of the possibility of any such damage, and even if these remedies fail their essential purpose.

These limitations of liability do not apply to liability for death or personal injury or for fraud, gross negligence or intentional misconduct, or in cases of negligence where a material obligation has been breached, a material obligation being such which forms a prerequisite to our delivery of services and on which you may reasonably rely, but only to the extent that the damages were directly caused by the breach and were foreseeable upon conclusion of this Contract and to the extent that they are typical in the context of this Contract.

5. Termination

We can each end this Contract, but some rights and obligations survive.

Both you and LinkedIn may terminate this Contract at any time with notice to the other. On termination, you lose the right to access or use the Services. The following shall survive termination:

- Our rights to use and disclose your feedback;
- Members and/or Visitors' rights to further re-share content and information you shared through the Services;
- Sections 4, 6, 7, and 8.2 of this Contract;
- Any amounts owed by either party prior to termination remain owed after termination.

You can visit our **Help Center** to close your account.

6. Governing Law and Dispute Resolution

In the unlikely event we end up in a legal dispute, you and LinkedIn agree to resolve it in California courts using California law, or Dublin, Ireland courts using Irish law.

This section shall not deprive you of any mandatory consumer protections under the law of the country to which we direct Services to you, where you have your habitual residence. **If you live in the *Designated Countries***: You and LinkedIn Ireland agree that the laws of Ireland, excluding conflict of laws rules, shall exclusively govern any dispute relating to this Contract and/or the Services. You and LinkedIn Ireland agree that claims and disputes can be litigated only in Dublin, Ireland, and we each agree to personal jurisdiction of the courts located in Dublin, Ireland.

For others outside of Designated Countries, including those who live outside of the United States: You and LinkedIn agree that the laws of the State of California, U.S.A., excluding its conflict of laws rules, shall exclusively govern any dispute relating to this Contract and/or the Services. You and LinkedIn both agree that all claims and disputes can be litigated only in the federal or state courts in Santa Clara County, California, USA, and you and LinkedIn each agree to personal jurisdiction in those courts.

7. General Terms

Here are some important details about the Contract.

If a court with authority over this Contract finds any part of it unenforceable, you and we agree that the court should modify the terms to make that part enforceable while still achieving its intent. If the court cannot do that, you and we agree to ask the court to remove that unenforceable part and still enforce the rest of this Contract.

This Contract (including additional terms that may be provided by us when you engage with a feature of the Services) is the only agreement between us regarding the Services and supersedes all prior agreements for the Services.

If we don't act to enforce a breach of this Contract, that does not mean that LinkedIn has waived its right to enforce this Contract. You may not assign or transfer this Contract (or your membership or use of Services) to anyone without our consent. However, you agree that LinkedIn may assign this Contract to its affiliates or a party that buys it without your consent. There are no third-party beneficiaries to this Contract.

You agree that the only way to provide us legal notice is at the addresses provided in Section 10.

8. LinkedIn "Dos and Don'ts"

8.1. Dos

LinkedIn is a community of professionals. This list of "Dos and Don'ts" along with our **Professional Community Policies** limit what you can and cannot do on our Services.

You agree that you will:

a. Comply with all applicable laws, including, without limitation, privacy laws, intellectual property laws, anti-spam laws, export control laws, tax laws, and regulatory requirements;

b. Provide accurate information to us and keep it updated;

c. Use your real name on your profile; and

d. Use the Services in a professional manner.

8.2. Don'ts

You agree that you will *not*:

a. Create a false identity on LinkedIn, misrepresent your identity, create a Member profile for anyone other than yourself (a real person), or use or attempt to use another's account;

b. Develop, support or use software, devices, scripts, robots or any other means or processes (including crawlers, browser plugins and add-ons or any other technology) to scrape the Services or otherwise copy profiles and other data from the Services;

c. Override any security feature or bypass or circumvent any access controls or use limits of the Service (such as caps on keyword searches or profile views);

d. Copy, use, disclose or distribute any information obtained from the Services, whether directly or through third parties (such as search engines), without the consent of LinkedIn;

e. Disclose information that you do not have the consent to disclose (such as confidential information of others (including your employer));

f. Violate the intellectual property rights of others, including copyrights, patents, trademarks, trade secrets or other proprietary rights. For example, do not copy or distribute (except through the available sharing functionality) the posts or other content of others without their permission, which they may give by posting under a Creative Commons license;

g. Violate the intellectual property or other rights of LinkedIn, including, without limitation, (i) copying or distributing our learning videos or other materials or (ii) copying or distributing our technology, unless it is released under open source licenses; (iii) using the word "LinkedIn" or our logos in any business name, email, or URL except as provided in the **Brand Guidelines**;

h. Post anything that contains software viruses, worms, or any other harmful code;

i. Reverse engineer, decompile, disassemble, decipher or otherwise attempt to derive the source code for the Services or any related technology that is not open source;

j. Imply or state that you are affiliated with or endorsed by LinkedIn without our express consent (e.g., representing yourself as an accredited LinkedIn trainer);

k. Rent, lease, loan, trade, sell/re-sell or otherwise monetize the Services or related data or access to the same, without LinkedIn's consent;

l. Deep-link to our Services for any purpose other than to promote your profile or a Group on our Services, without LinkedIn's consent;

m. Use bots or other automated methods to access the Services, add or download contacts, send or redirect messages;

n. Monitor the Services' availability, performance or functionality for any competitive purpose;

o. Engage in "framing," "mirroring," or otherwise simulating the appearance or function of the Services;

p. Overlay or otherwise modify the Services or their appearance (such as by inserting elements into the Services or removing, covering, or obscuring an advertisement included on the Services);

q. Interfere with the operation of, or place an unreasonable load on, the Services (e.g., spam, denial of service attack, viruses, gaming algorithms); and/or

r. Violate the **Professional Community Policies** or any additional terms concerning a specific Service that are provided when you sign up for or start using such Service, and the **Bing Maps terms** where applicable.

9. Complaints Regarding Content

Contact information for complaint about content provided by our Members.

We respect the intellectual property rights of others. We require that information posted by Members be accurate and not in violation of the intellectual property rights or other rights of third parties. We provide a **policy and process** for complaints concerning content posted by our Members.

10. How To Contact Us

Our Contact information. Our **Help Center** also provides information about our Services.

For general inquiries, you may contact us **online**. For legal notices or service of process, you may write us at these **addresses**.

Medium
https://policy.medium.com/medium-terms-of-service-9db0094a1e0f

Effective: March 7, 2016

These Terms of Service ("Terms") are a contract between you and A Medium Corporation. They govern your use of Medium's sites, services, mobile apps, products, and content ("Services").

By using Medium, you agree to these Terms. If you don't agree to any of the Terms, you can't use Medium.

We can change these Terms at any time. We keep a historical record of all changes to our Terms on GitHub. If a change is material, we'll let you know before they take effect. By using Medium on or after that effective date, you agree to the new Terms. If you don't agree to them, you should delete your account before they take effect, otherwise your use of the site and content will be subject to the new Terms.

Content rights & responsibilities

You own the rights to the content you create and post on Medium.

By posting content to Medium, you give us a nonexclusive license to publish it on Medium Services, including anything reasonably related to publishing it (like storing, displaying, reformatting, and distributing it). In consideration for Medium granting you access to and use of the Services, you agree that Medium may enable advertising on the Services, including in connection with the display of your content or other information. We may also use your content to promote Medium, including its products and content. We will never sell your content to third parties without your explicit permission.

You're responsible for the content you post. This means you assume all risks related to it, including someone else's reliance on its accuracy, or claims relating to intellectual property or other legal rights.

You're welcome to post content on Medium that you've published elsewhere, as long as you have the rights you need to do so. By posting content to Medium, you represent that doing so doesn't conflict with any other agreement you've made.

By posting content you didn't create to Medium, you are representing that you have the right to do so. For example, you are posting a work that's in the public

domain, used under license (including a free license, such as Creative Commons), or a fair use.

We can remove any content you post for any reason.

You can delete any of your posts, or your account, anytime. Processing the deletion may take a little time, but we'll do it as quickly as possible. We may keep backup copies of your deleted post or account on our servers for up to 14 days after you delete it.

Our content and services

We reserve all rights in Medium's look and feel. Some parts of Medium are licensed under third-party open source licenses. We also make some of our own code available under open source licenses. As for other parts of Medium, you may not copy or adapt any portion of our code or visual design elements (including logos) without express written permission from Medium unless otherwise permitted by law.

You may not do, or try to do, the following: (1) access or tamper with non-public areas of the Services, our computer systems, or the systems of our technical providers; (2) access or search the Services by any means other than the currently available, published interfaces (e.g., APIs) that we provide; (3) forge any TCP/IP packet header or any part of the header information in any email or posting, or in any way use the Services to send altered, deceptive, or false source-identifying information; or (4) interfere with, or disrupt, the access of any user, host, or network, including sending a virus, overloading, flooding, spamming, mail-bombing the Services, or by scripting the creation of content or accounts in such a manner as to interfere with or create an undue burden on the Services.

Crawling the Services is allowed if done in accordance with the provisions of our robots.txt file, but scraping the Services is prohibited.

We may change, terminate, or restrict access to any aspect of the service, at any time, without notice.

No children

Medium is only for people 13 years old and over. By using Medium, you affirm that you are over 13. If we learn someone under 13 is using Medium, we'll terminate their account.

Security

If you find a security vulnerability on Medium, tell us. We have a bug bounty disclosure program.

Incorporated rules and policies

By using the Services, you agree to let Medium collect and use information as detailed in our Privacy Policy. If you're outside the United States, you consent to letting Medium transfer, store, and process your information (including your personal information and content) in and out of the United States.

To enable a functioning community, we have Rules. To ensure usernames are distributed and used fairly, we have a Username Policy. Under our DMCA Policy, we'll remove material after receiving a valid takedown notice. Under our Trademark Policy, we'll investigate any use of another's trademark and respond appropriately.

By using Medium, you agree to follow these Rules and Policies. If you don't, we may remove content, or suspend or delete your account.

Miscellaneous

Disclaimer of warranty. Medium provides the Services to you as is. You use them at your own risk and discretion. That means they don't come with any warranty. None expressed, none implied. No implied warranty of merchantability, fitness for a particular purpose, availability, security, title or non-infringement.

Limitation of Liability. Medium won't be liable to you for any damages that arise from your using the Services. This includes if the Services are hacked or unavailable. This includes all types of damages (indirect, incidental, consequential, special or exemplary). And it includes all kinds of legal claims, such as breach of contract, breach of warranty, tort, or any other loss.

No waiver. If Medium doesn't exercise a particular right under these Terms, that doesn't waive it.

Severability. If any provision of these terms is found invalid by a court of competent jurisdiction, you agree that the court should try to give effect to the parties' intentions as reflected in the provision and that other provisions of the Terms will remain in full effect.

Choice of law and jurisdiction. These Terms are governed by California law, without reference to its conflict of laws provisions. You agree that any suit arising from the Services must take place in a court located in San Francisco, California.

Entire agreement. These Terms (including any document incorporated by reference into them) are the whole agreement between Medium and you concerning the Services.

Government use. If you're using Medium for the U.S. Government, this Amendment to Medium's Terms of Service applies to you.

Questions? Let us know at legal@medium.com.

Pinterest
https://policy.pinterest.com/en/terms-of-service

Thank you for using Pinterest!

- These Terms of Service ("Terms") govern your access to and use of the Pinterest website, apps, APIs, and widgets ("Pinterest" or the "Service"). Please read these Terms carefully, and contact us if you have any questions. By accessing or using Pinterest, you agree to be bound by these Terms, our Privacy Policy, our Cookies Policy and our Community Guidelines.

More simply put

Every company has its terms. These are ours.

1. Our service

- Pinterest helps you discover and do what you love. To do that, we show you things we think will be relevant, interesting and personal to you based on your onsite and offsite activity. To provide our Service, we need to be able to identify you and your interests. Some of the things we show you are promoted by advertisers. As part of our service we try to ensure that even promoted content is relevant and interesting to you. You can identify promoted content because it will be clearly labelled.

More simply put

Pinterest helps you discover and do what you love. It's customized to you. We need to know what you like to make everything on Pinterest relevant to you.

2. Using Pinterest

- **a. Who can use Pinterest**

You may use Pinterest only if you can legally form a binding contract with Pinterest, and only in compliance with these Terms and all applicable laws. When you create your Pinterest account, you must provide us with accurate and complete information. You can't use Pinterest if it would be prohibited by U.S. sanctions. Any use or access by anyone under the age of 13 is not allowed. If you're based in the EEA, you may only use Pinterest if you are over the age at which you can provide consent to data processing under the laws of your country. Using Pinterest may include downloading software to your computer, phone, tablet, or other device. You agree that we may automatically update that software, and these Terms will apply to any updates.

- **b. Our license to you**

Subject to these Terms and our policies (including our Community Guidelines), we grant you a limited, non-exclusive, non-transferable, and revocable license to use our Service.

- **c. Commercial use of Pinterest**

If you want to use Pinterest for commercial purposes you must create a business account and agree to our Business Terms of Service. If you do open an account for a company, organization, or other entity, then "you" includes you and that entity, and you promise that you are authorized to grant all permissions and licenses provided in these Terms and bind the entity to these Terms, and that you agree to these Terms on the entity's behalf.

More simply put

You cannot use Pinterest if you're under 13 (or older in some countries). Also, if you are using Pinterest for work, you need to set up a business account.

3. Your content

- **a. Posting content**

Pinterest allows you to post content, including photos, comments, links, and other materials. Anything that you post or otherwise make available on Pinterest is referred to as "User Content." You retain all rights in, and are solely responsible for, the User Content you post to Pinterest.

More simply put

If you post your content on Pinterest, it still belongs to you.

- **b. How Pinterest and other users can use your content**

You grant Pinterest and our users a non-exclusive, royalty-free, transferable, sublicensable, worldwide license to use, store, display, reproduce, save, modify, create derivative works, perform, and distribute your User Content on Pinterest solely for the purposes of operating, developing, providing, and using Pinterest. Nothing in these Terms restricts other legal rights Pinterest may have to User Content, for example under other licenses. We reserve the right to remove or modify User Content, or change the way it's used in Pinterest, for any reason. This includes User Content that we believe violates these Terms, our Community Guidelines, or any other policies.

More simply put

If you post your content on Pinterest, we can show it to people and others can save it. Don't post porn or spam or be a jerk to other people on Pinterest.

- **c. How long we keep your content**

Following termination or deactivation of your account, or if you remove any User Content from Pinterest, we may keep your User Content for a reasonable period of time for backup, archival, or audit purposes. Pinterest and its users may retain and continue to use, store, display, reproduce, re-pin, modify, create derivative works, perform, and distribute any of your User Content that other users have stored or shared on Pinterest.

More simply put

If you choose to post content, you give us permission to use it to provide and improve Pinterest. Copies of content shared with others may remain even after you delete the content from your account.

- **d. Feedback you provide**

We value hearing from our users, and are always interested in learning about ways we can make Pinterest more awesome. If you choose to submit comments, ideas or feedback, you agree that we are free to use them without any restriction or compensation to you. By accepting your submission, Pinterest doesn't waive any rights to use similar or related feedback previously known to Pinterest, or developed by its employees, or obtained from sources other than you.

More simply put

We can use your suggestions to make Pinterest better.

4. Copyright policy

- Pinterest has adopted and implemented the Pinterest Copyright Policy in accordance with the Digital Millennium Copyright Act and other applicable copyright laws. For more information, please read our Copyright Policy.

More simply put

We respect copyrights. You should, too.

5. Security

- We care about the security of our users. While we work to protect the security of your content and account, Pinterest can't guarantee that unauthorized third parties won't be able to defeat our security measures. We ask that you keep your password secure. Please notify us immediately of any compromise or unauthorized use of your account.

More simply put

You can help us fight spammers by keeping these security tips in mind.

6. Third party links, sites, and services

- Pinterest may contain links to third party websites, advertisers, services, special offers, or other events or activities that are not owned or controlled by Pinterest. We don't endorse or assume any responsibility for any such third party sites, information, materials, products, or services. If you access any third party website, service, or content from Pinterest, you do so at your own risk and you agree that Pinterest has no liability arising from your use of or access to any third party website, service, or content.

More simply put

Pinterest has links to content off of Pinterest. Most of that stuff is awesome, but we're not responsible when it's not.

7. Termination

- Pinterest may terminate or suspend your right to access or use Pinterest for any reason on appropriate notice. We may terminate or suspend your access immediately and without notice if we have a good reason, including any violation of our Community Guidelines. Upon termination, you continue to be bound by Sections 3 and 8 of these Terms.

More simply put

Pinterest is provided to you for free. We reserve the right to refuse service to anyone, but we will provide appropriate notice.

8. Indemnity

- If you use Pinterest for commercial purposes (i.e., you are not a consumer) without agreeing to our Business Terms as required by Section 2(c) of these Terms, you agree to indemnify and hold harmless Pinterest Inc, Pinterest Europe Ltd, their affiliates and their respective officers, directors, employees and agents, from and against any claims, suits, proceedings, disputes, demands, liabilities, damages, losses, costs and expenses, including, without limitation, reasonable legal and accounting fees (including costs of defense of claims, suits or proceedings brought by third parties), in any way related to your access to or use of our Service, your User Content, or your breach of any of these Terms.

More simply put

If we are sued because of something your business does on Pinterest, you have to pay our costs. Also, you should have created a business account and agreed to our Business Terms in the first place.

9. Disclaimers

- Our Service and all content on Pinterest is provided on an "as is" basis without warranty of any kind, whether express or implied.

Pinterest specifically disclaims any and all warranties and conditions of merchantability, fitness for a particular purpose, and non-infringement, and any warranties arising out of course of dealing or usage of trade.

Pinterest takes no responsibility and assumes no liability for any User Content that you or any other person or third party posts or sends using our Service. You understand and agree that you may be exposed to User Content that’s inaccurate, objectionable, inappropriate for children, or otherwise unsuited to your purpose.

If you're a consumer in the EEA, we don’t exclude or limit any liability for gross negligence, intent, or death or personal injury caused by our negligence or willful misconduct.

More simply put

Unfortunately, people post bad stuff on services like Pinterest. We take that kind of thing seriously but you still might run into it before we have a chance to take it down. If you see bad stuff, please report it to us here.

10. Limitation of liability

- TO THE MAXIMUM EXTENT PERMITTED BY LAW, PINTEREST SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY LOSS OF PROFITS OR REVENUES, WHETHER INCURRED DIRECTLY OR INDIRECTLY, OR ANY LOSS OF DATA, USE, GOODWILL, OR OTHER INTANGIBLE LOSSES, RESULTING FROM (A) YOUR ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THE SERVICE; (B) ANY CONDUCT OR CONTENT OF ANY THIRD PARTY ON THE SERVICE, INCLUDING WITHOUT LIMITATION, ANY DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD PARTIES; OR (C) UNAUTHORIZED ACCESS, USE OR ALTERATION OF YOUR TRANSMISSIONS OR CONTENT. IN NO EVENT SHALL PINTEREST'S AGGREGATE LIABILITY FOR ALL CLAIMS RELATING TO THE SERVICE EXCEED ONE HUNDRED U.S. DOLLARS (U.S. $100.00).

If we cause damage to you and you're a consumer in the EEA, the above doesn’t apply. Instead, Pinterest’s liability will be limited to foreseeable damages arising due to a breach of material contractual obligations typical for this type of contract. Pinterest isn’t liable for damages that result from a non-material breach of any other applicable duty of care. This limitation of liability won’t apply to any statutory liability that cannot be limited, to liability for death or personal injury caused by our negligence or willful misconduct, or if and to exclude our responsibility for something we have specifically promised to you.

More simply put

We are building the best service we can for you but we can't promise it will be perfect. We're not liable for various things. If you think we are, let's try to work it out like adults.

11. Arbitration

- For any dispute you have with Pinterest, you agree to first contact us and try to resolve the dispute with us informally. If we need to contact you, we will do so at the email address on your Pinterest account. If Pinterest hasn’t been able to resolve the dispute with you informally, we each agree to resolve any claim, dispute, or controversy (excluding claims for injunctive or other equitable relief) arising out of or in connection with or

relating to these Terms through binding arbitration or (for qualifying claims) in small claims court.

Arbitration is a more informal way to resolve our disagreements than a lawsuit in court. For instance, arbitration uses a neutral arbitrator instead of a judge or jury, involves more limited discovery, and is subject to very limited review by courts. Although the process is more informal, arbitrators can award the same damages and relief that a court can award. You agree that, by agreeing to these Terms of Service, the U.S. Federal Arbitration Act governs the interpretation and enforcement of this provision, and that you and Pinterest are each waiving the right to a trial by jury or to participate in a class action. The arbitrator has exclusive authority to resolve any dispute relating to the interpretation, applicability, or enforceability of this binding arbitration agreement. This arbitration provision shall survive termination of this Agreement and the termination of your Pinterest account.

Any arbitration will be administered by the American Arbitration Association ("AAA") under the Consumer Arbitration Rules then in effect for the AAA, except as provided herein. You can find their forms at www.adr.org. Unless you and Pinterest agree otherwise, the arbitration will be conducted in the county (or parish) where you reside. Each party will be responsible for paying any AAA filing, administrative and arbitrator fees in accordance with AAA Rules, except that Pinterest will pay for your reasonable filing, administrative, and arbitrator fees if your claim for damages does not exceed $75,000 and is non-frivolous (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)). If your claim is for $10,000 or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds $10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision explaining the essential findings and conclusions on which the award is based, and any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Nothing in this Section shall prevent either party from seeking injunctive or other equitable relief from the courts, including for matters related to data security, intellectual property or unauthorized access to the Service. ALL CLAIMS MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING, AND, UNLESS WE AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS. YOU AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND PINTEREST ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

NOTHING IN THESE TERMS OF SERVICE SHALL AFFECT ANY NON-WAIVABLE STATUTORY RIGHTS THAT APPLY TO YOU. To the extent any claim, dispute or controversy regarding Pinterest or our Service isn’t arbitrable under applicable laws or otherwise: you and Pinterest both agree that any claim or dispute regarding Pinterest will be resolved exclusively in accordance with Section 12 of these Terms.

If you're a consumer in the EEA, Section 11 doesn't apply to you.

12. Governing law and jurisdiction

- These Terms shall be governed by the laws of the State of California, without respect to its conflict of laws principles. If you are not a consumer in the EEA, the exclusive place of jurisdiction for all disputes arising from or in connection with this agreement is San Francisco County, California, or the United States District Court for the Northern District of California and our dispute will be determined under California law.

If you are a consumer in the EEA, this won't deprive you of any protection you have under the law of the country where you live and access to the courts in that country.

More simply put

The Bay Area is beautiful this time of year. It doesn't matter what time of year it is, that's what's so great! Anyway, you'll have to sue us here.

In the EEA, this applies if you're a merchant, but not if you're a consumer. If you are a consumer in the EEA, you can sue us in your home courts.

13. General terms

- **Notification procedures and changes to these Terms**

We reserve the right to determine the form and means of providing notifications to you, and you agree to receive legal notices electronically if that's what we decide. We may revise these Terms from time to time and the most current version will always be posted on our website. If a revision, in our discretion, is material, we'll notify you. By continuing to access or use Pinterest after revisions become effective, you agree to be bound by the new Terms. If you don't agree to the new terms, please stop using Pinterest.

More simply put

If we're making a big change to the terms, we'll let you know. If you don't like the new terms, please stop using Pinterest.

- **Assignment**

These Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Pinterest without restriction. Any attempted transfer or assignment in violation hereof shall be null and void.

If you're a consumer in the EEA, either you or Pinterest may assign this agreement, and any rights and licences granted under it, to a third party. In case of such an assignment by Pinterest, you are entitled to terminate the agreement with immediate effect by deactivating your account. Pinterest will provide you with reasonable notice of any such assignment.

- **Entire agreement/severability**

These Terms, together with the Privacy Policy and any amendments and any additional agreements you may enter into with Pinterest shall constitute the entire agreement between you and Pinterest concerning the Service. If any provision of these Terms is deemed invalid, then that provision will be limited or eliminated to the minimum extent necessary, and the remaining provisions of these Terms will remain in full force and effect.

- **No waiver**

No waiver of any term of these Terms shall be deemed a further or continuing waiver of such term or any other term, and Pinterest's failure to assert any right or provision under these Terms shall not constitute a waiver of such right or provision.

- **Parties**

If you live in the United States, these Terms are a contract between you and Pinterest Inc., 651 Brannan Street, San Francisco, CA 94103. If you live outside the United States, these Terms are a contract between you and Pinterest Europe Ltd., an Irish company with its registered office at Palmerston House, 2nd Floor, Fenian Street, Dublin 2, Ireland.

More simply put

Who you deal with depends on where you live.

- Effective May 1, 2018

Reddit
https://www.redditinc.com/policies/user-agreement

Effective September 24, 2018.

Reddit powers hundreds of thousands of distinct online communities.
This User Agreement and your conduct make that possible.

Hello, redditors and people of the Internet! This Reddit User Agreement ("**Terms**") applies to your access to and use of the websites, mobile apps, widgets, and other online products and services (collectively, the "**Services**") provided by Reddit, Inc. ("**Reddit**," "**we**," or "**us**").

Remember Reddit is for fun and is intended to be a place for your entertainment, but we still need some basic rules. By accessing or using our Services, you agree to be bound by these Terms. If you do not agree to these Terms, you may not access or use our Services.

Please take a look at Reddit's Privacy Policy too—it explains how we collect, use, and share information about you when you access or use our Services.

1. Your Access to the Services

Children under the age of 13 are not allowed to create an account or otherwise use the Services. Additionally, if you are in the European Economic Area, you must be over the age required by the laws of your country to create an account or otherwise use the Services, or we need to have received verifiable consent from your parent or legal guardian.

In addition, certain of our Services or portions of our Services require you to be older than 13 years of age, so please read all notices and any Additional Terms carefully when you access the Services.

If you are accepting these Terms on behalf of another legal entity, including a business or a government, you represent that you have full legal authority to bind such entity to these terms.

2. Your Use of the Services

Reddit grants you a personal, non-transferable, non-exclusive, revocable, limited license to use and access the Services solely as permitted by these Terms. We reserve all rights not expressly granted to you by these Terms.

Except as permitted through the Services or as otherwise permitted by us in writing, your license does not include the right to:

- license, sell, transfer, assign, distribute, host, or otherwise commercially exploit the Services or Content;
- modify, prepare derivative works of, disassemble, decompile, or reverse engineer any part of the Services or Content; or

- access the Services or Content in order to build a similar or competitive website, product, or service, except as permitted under the Reddit API Terms of Use.

We reserve the right to modify, suspend, or discontinue the Services (in whole or in part) at any time, with or without notice to you. Any future release, update, or other addition to functionality of the Services will be subject to these Terms, which may be updated from time to time. You agree that we will not be liable to you or to any third party for any modification, suspension, or discontinuation of the Services or any part thereof.

3. Your Reddit Account and Account Security

To use certain features of our Services, you may be required to create a Reddit account (an "**Account**") and provide us with a username, password, and certain other information about yourself as set forth in the Privacy Policy.

You are solely responsible for the information associated with Your Account and anything that happens related to Your Account. You must maintain the security of your Account and promptly notify Reddit if you discover or suspect that someone has accessed your Account without your permission. We recommend that you use a strong password that is used only with the Services.

You will not license, sell, or transfer your Account without our prior written approval.

4. Your Content

The Services may contain information, text, links, graphics, photos, videos, or other materials ("**Content**"), including Content created with or submitted to the Services by you or through your Account ("**Your Content**"). We take no responsibility for and we do not expressly or implicitly endorse any of Your Content.

By submitting Your Content to the Services, you represent and warrant that you have all rights, power, and authority necessary to grant the rights to Your Content contained within these Terms. Because you alone are responsible for Your Content, you may expose yourself to liability if you post or share Content without all necessary rights.

You retain any ownership rights you have in Your Content, but you grant Reddit the following license to use that Content:

When Your Content is created with or submitted to the Services, you grant us a worldwide, royalty-free, perpetual, irrevocable, non-exclusive, transferable, and sublicensable license to use, copy, modify, adapt, prepare derivative works from, distribute, perform, and display Your Content and any name, username, voice, or likeness provided in connection with Your Content in all media formats and channels now known or later developed. This license includes the right for us to make Your Content available for syndication, broadcast, distribution, or publication by other companies, organizations, or individuals who partner with Reddit. You also agree that we may remove metadata associated with Your Content, and you irrevocably waive any claims and assertions of moral rights or attribution with respect to Your Content.

Any ideas, suggestions, and feedback about Reddit or our Services that you provide to us are entirely voluntary, and you agree that Reddit may use such ideas, suggestions, and feedback without compensation or obligation to you.

Although we have no obligation to screen, edit, or monitor Your Content, we may, in our sole discretion, delete or remove Your Content at any time and for any reason, including for a violation of these Terms, a violation of our Content Policy, or if you otherwise create liability for us.

5. Third-Party Content, Advertisements and Promotions

The Services may contain links to third-party websites, products, or services, which may be posted by advertisers, our affiliates, our partners, or other users ("**Third-Party Content**"). Third-Party Content is not under our control, and we are not responsible for any of their websites, products, or services. Your use of Third-Party Content is at your own risk and you should make any investigation you feel necessary before proceeding with any transaction in connection with such Third-Party Content.

The Services may also contain sponsored Third-Party Content or advertisements. The type, degree, and targeting of advertisements are subject to change, and you acknowledge and agree that we may place advertisements in connection with the display of any Content or information on the Services, including Your Content.

If you choose to use the Services to conduct a promotion, including a contest or sweepstakes, you alone are responsible for conducting the promotion in compliance with all applicable laws and regulations. The terms of your promotion must specifically state that the promotion is not sponsored by, endorsed by, or associated with Reddit and the rules for your promotion must require each entrant or participant to release Reddit from any liability related to the promotion.

6. Things You Cannot Do

When accessing or using the Services, you must respect others and their rights, including by following these Terms and the Content Policy, so that we all may continue to use and enjoy the Services. We support the responsible reporting of security vulnerabilities. To report a security issue, please send an email to security@reddit.com.

When accessing or using our Services, you will not:

- Create or submit Content that violates our Content Policy or attempt to circumvent any content-filtering techniques we use;
- Use the Services to violate applicable law or infringe any person or entity's intellectual property or any other proprietary rights;
- Attempt to gain unauthorized access to another user's Account or to the Services (or to other computer systems or networks connected to or used together with the Services);

- Upload, transmit, or distribute to or through the Services any computer viruses, worms, or other software intended to interfere with the intended operation of a computer system or data;

- Use the Services to harvest, collect, gather or assemble information or data regarding the Services or users of the Services except as permitted in these Terms or in a separate agreement with Reddit;

- Use the Services in any manner that could interfere with, disrupt, negatively affect, or inhibit other users from fully enjoying the Services or that could damage, disable, overburden, or impair the functioning of the Services in any manner;

- Intentionally negate any user's actions to delete or edit their Content on the Services; or

- Access, query, or search the Services with any automated system, other than through our published interfaces and pursuant to their applicable terms. However, we conditionally grant permission to crawl the Services for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials subject to the parameters set forth in our robots.txt file.

7. Moderators

Moderating a subreddit is an unofficial, voluntary position that may be available to users of the Services. We are not responsible for actions taken by the moderators. We recognize that moderation can take some work, so we may change the features or abilities associated with moderating from time to time without prior notice. We reserve the right to revoke or limit a user's ability to moderate at any time and for any reason or no reason, including for a breach of these Terms.

If you choose to moderate a subreddit:

- You agree to follow the Moderator Guidelines for Healthy Communities;

- You agree that when you receive reports related to your community, that you will take action to moderate by removing content and/or escalating to the admins for review;

- You may not represent that you are authorized to act on behalf of Reddit, Inc.;

- You may not enter into any agreement with a third party on behalf of Reddit, or any subreddits that you moderate, without our written approval;

- You may not perform moderation actions in return for any form of compensation or favor from third parties;

- If you have access to non-public information as a result of moderating a subreddit, you will use such information only in connection with your performance as a moderator; and

- You may create and enforce rules for the subreddits you moderate, provided that such rules do not conflict with these Terms, our Content Policy, and the Moderator Guidelines for Healthy Communities.

Reddit reserves the right, but has no obligation, to overturn any action or decision of a moderator if Reddit believes that such action or decision is not in the interest of Reddit or the Reddit community.

8. Copyright, the DMCA & Takedowns

Reddit respects the intellectual property of others and requires that users of our Services do the same. We have a policy that includes the removal of any infringing materials from the Services and for the termination, in appropriate circumstances, of users of our Services who are repeat infringers. If you believe that anything on our Services infringes a copyright that you own or control, you may notify Reddit's Designated Agent by filling out our DMCA Report Form or by contacting:

Copyright Agent
Reddit, Inc.
420 Taylor St.
San Francisco, CA 94102
copyright@reddit.com

Also, please note that if you knowingly misrepresent that any activity or material on our Service is infringing, you may be liable to Reddit for certain costs and damages.

If we remove Your Content in response to a copyright or trademark notice, we will notify you via Reddit's private messaging system. If you believe Your Content was wrongly removed due to a mistake or misidentification, you can send a counter notification to our Copyright Agent (contact information provided above). Please see 17 U.S.C. §512(g)(3) for the requirements of a proper counter notification.

9. Reddit Premium, Virtual Goods and Payment Information

There are no fees for use of many aspects of the Services. However, premium features, including Reddit Premium and Virtual Goods, which include Coins, may be available for purchase on certain of our Services. In addition to these terms, by purchasing or using Reddit Premium or our Virtual Goods, you further agree to the Reddit Premium and Virtual Goods Agreement.

Reddit may change the fees or benefits associated with the premium features from time to time with reasonable advance notice; provided, however, that no advance notice will be required for temporary promotions, including temporary reductions in the fees associated with the premium features.

You may submit your debit card, credit card, or other payment information ("**Payment Information**") via our Services to purchase premium features or other paid products or services. We use third-party service providers to process your Payment Information. If you submit your Payment Information, you agree to pay all costs that you incur, and you give us permission to

charge you when payment is due for an amount that includes these costs and any applicable taxes and fees.

10. Indemnity

Except to the extent prohibited by law, you agree to defend, indemnify, and hold us, our licensors, our third party service providers and our officers, employees, licensors, and agents (the "**Reddit Entities**") harmless, including costs and attorneys' fees, from any claim or demand made by any third party due to or arising out of (a) your use of the Services, (b) your violation of these Terms, (c) your violation of applicable laws or regulations, or (d) Your Content. We reserve the right to control the defense of any matter for which you are required to indemnify us, and you agree to cooperate with our defense of these claims.

11. Disclaimers

THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. REDDIT, ITS LICENSORS, AND ITS THIRD PARTY SERVICE PROVIDERS DO NOT WARRANT THAT THE SERVICES ARE ACCURATE, COMPLETE, RELIABLE, CURRENT, OR ERROR FREE. REDDIT DOES NOT CONTROL, ENDORSE, OR TAKE RESPONSIBILITY FOR ANY CONTENT AVAILABLE ON OR LINKED TO THE SERVICES OR THE ACTIONS OF ANY THIRD PARTY OR USER, INCLUDING MODERATORS. WHILE REDDIT ATTEMPTS TO MAKE YOUR ACCESS TO AND USE OF OUR SERVICES SAFE, WE DO NOT REPRESENT OR WARRANT THAT OUR SERVICES OR SERVERS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

12. Limitation of Liability

IN NO EVENT AND UNDER NO THEORY OF LIABILITY, INCLUDING CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, WARRANTY, OR OTHERWISE, WILL THE REDDIT ENTITIES BE LIABLE TO YOU FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES, OR LOST PROFITS ARISING FROM OR RELATING TO THESE TERMS OR THE SERVICES, INCLUDING THOSE ARISING FROM OR RELATING TO CONTENT MADE AVAILABLE ON THE SERVICES THAT IS ALLEGED TO BE DEFAMATORY, OFFENSIVE, OR ILLEGAL. ACCESS TO, AND USE OF, THE SERVICES IS AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR DEVICE OR COMPUTER SYSTEM, OR LOSS OF DATA RESULTING THEREFROM. IN NO EVENT WILL THE AGGREGATE LIABILITY OF THE REDDIT ENTITIES EXCEED THE GREATER OF ONE HUNDRED U.S. DOLLARS ($100) OR ANY AMOUNT YOU PAID REDDIT IN THE PREVIOUS SIX MONTHS FOR THE SERVICES GIVING RISE TO THE CLAIM. THE LIMITATIONS OF THIS SECTION WILL APPLY TO ANY THEORY OF LIABILITY, INCLUDING THOSE BASED ON WARRANTY, CONTRACT, STATUTE, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, AND EVEN IF THE REDDIT ENTITIES HAVE BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGE,

AND EVEN IF ANY REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE. THE FOREGOING LIMITATION OF LIABILITY WILL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

13. Governing Law and Venue

We want you to enjoy Reddit, so if you have an issue or dispute, you agree to raise it and try to resolve it with us informally. You can contact us with feedback and concerns here or by emailing us at contact@reddit.com.

Except for the government entities listed below: any claims arising out of or relating to these Terms or the Services will be governed by the laws of California, other than its conflict of laws rules; all disputes related to these Terms or the Services will be brought solely in the federal or state courts located in San Francisco, California; and you consent to personal jurisdiction in these courts.

Government Entities

If you are a U.S. city, county, or state government entity, then this Section 13 does not apply to you.

If you are a U.S. federal government entity: any claims arising out of or relating to these Terms or the Services will be governed by the laws of the United States of America without reference to conflict of laws. To the extent permitted by federal law, the laws of California (other than its conflict of law rules) will apply in the absence of applicable federal law. All disputes related to these Terms or the Services will be brought solely in the federal or state courts located in San Francisco, California.

14. Changes to these Terms

We may make changes to these Terms from time to time. If we make changes, we will post the amended Terms to our Services and update the Effective Date above. If the changes, in our sole discretion, are material, we may also notify you by sending an email to the address associated with your Account (if you have chosen to provide an email address) or by otherwise providing notice through our Services. By continuing to access or use the Services on or after the Effective Date of the revised Terms, you agree to be bound by the revised Terms. If you do not agree to the revised Terms, you must stop accessing and using our Services before the changes become effective.

15. Additional Terms

Because we offer a variety of Services, you may be asked to agree to additional terms before using a specific product or service offered by Reddit ("**Additional Terms**"). To the extent any Additional Terms conflict with these Terms, the Additional Terms govern with respect to your use of the corresponding Service.

If you use Reddit Premium or Virtual Goods, you must also agree to our Terms for Reddit Premium and Virtual Goods.

If you use the self-service platform for advertising, you must also agree to our Terms for Self-Service Advertising.

If you use our public API, you must also agree to our Reddit API Terms of Use.

If you use RedditGifts, you must agree to the RedditGifts Terms of Service.

16. Termination

You may terminate these Terms at any time and for any reason by deleting your Account and discontinuing your use of all Services. If you stop using the Services without deactivating your Accounts, your Accounts may be deactivated due to prolonged inactivity.

We may suspend or terminate your Accounts, status as a moderator, or ability to access or use the Services at any time for any or no reason, including for a violation of these Terms or our Content Policy.

The following sections will survive any termination of these Terms or of your Accounts: 4 (Your Content), 6 (Things You Cannot Do), 10 (Indemnity), 11 (Disclaimers), 12 (Limitation of Liability), 13 (Governing Law and Venue), 16 (Termination), and 17 (Miscellaneous).

17. Miscellaneous

These Terms constitute the entire agreement between you and us regarding your access to and use of the Services. Our failure to exercise or enforce any right or provision of these Terms will not operate as a waiver of such right or provision. If any provision of these Terms is, for any reason, held to be illegal, invalid or unenforceable, the rest of the Terms will remain in effect. You may not assign or transfer any of your rights or obligations under these Terms without our consent. We may freely assign these Terms.

Contact Information

Reddit, Inc.
420 Taylor St.
San Francisco, CA 94102
United States

Authorized to receive service in Germany on behalf of Reddit, Inc. for administrative and judicial proceedings within the meaning of Section 5(1) of the Network Enforcement Act:

Taylor Wessing PartG mbB
- NetzDG-Zustellungen -
Am Sandtorkai 41
20457 Hamburg

Snapchat
https://www.snap.com/en-US/terms/

Snap Inc. Terms of Service

(If you live in the United States)

Effective: October 30, 2019

Welcome!

We've drafted these Terms of Service (which we call the "Terms") so you'll know the rules that govern our relationship with you. Although we have tried our best to strip the legalese from the Terms, there are places where these Terms may still read like a traditional contract. There's a good reason for that: These Terms do indeed form a legally binding contract between you and Snap Inc. So please read them carefully.

By using Snapchat, Bitmoji, or any of our other products or services that link to these Terms (we refer to these collectively as the "Services"), you agree to the Terms. Of course, if you don't agree with them, then don't use the Services.

ARBITRATION NOTICE: THESE TERMS CONTAIN AN ARBITRATION CLAUSE A LITTLE LATER ON. EXCEPT FOR CERTAIN TYPES OF DISPUTES MENTIONED IN THAT ARBITRATION CLAUSE, YOU AND Snap Inc. AGREE THAT DISPUTES BETWEEN US WILL BE RESOLVED BY MANDATORY BINDING ARBITRATION, AND YOU AND Snap Inc. WAIVE ANY RIGHT TO PARTICIPATE IN A CLASS-ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.

1. Who Can Use the Services

No one under 13 is allowed to create an account or use the Services. We may offer additional Services with additional terms that may require you to be even older to use them. So please read all terms carefully.

By using the Services, you state that:

- You can form a binding contract with Snap Inc.
- You are not a person who is barred from receiving the Services under the laws of the United States or any other applicable jurisdiction—including, for example, that you do not appear on the U.S. Treasury Department's list of Specially Designated Nationals or face any other similar prohibition.
- You are not a convicted sex offender.
- You will comply with these Terms and all applicable local, state, national, and international laws, rules, and regulations.

If you are using the Services on behalf of a business or some other entity, you state that you are authorized to grant all licenses set forth in these Terms and to agree to these Terms on behalf of the business or entity. If you are using the Services on behalf of an entity of the U.S. Government, you agree to the Amendment to Snap Inc. Terms of Service for U.S. Government Users.

2. Rights We Grant You

Snap Inc. grants you a personal, worldwide, royalty-free, non-assignable, nonexclusive, revocable, and non-sublicensable license to access and use the Services. This license is for the sole purpose of letting you use and enjoy the Services' benefits in a way that these Terms and our usage policies, such as our Community Guidelines, allow.

The Services include Bitmoji, which allows you to assemble an avatar using visual elements we provide (a "Bitmoji Avatar"). All Bitmoji Avatars are owned exclusively by Snap Inc., and we reserve the right to use any Bitmoji Avatars for any purpose, including to promote our products and services.

Any software that we provide you may automatically download and install upgrades, updates, or other new features. You may be able to adjust these automatic downloads through your device's settings.

You may not copy, modify, distribute, sell, or lease any part of our Services, nor may you reverse engineer or attempt to extract the source code of that software, unless laws prohibit these restrictions or you have our written permission to do so.

3. Rights You Grant Us

Many of our Services let you create, upload, post, send, receive, and store content. When you do that, you retain whatever ownership rights in that content you had to begin with. But you grant us a license to use that content. How broad that license is depends on which Services you use and the Settings you have selected.

We call Story submissions that are set to be viewable by Everyone as well as content you submit to crowd-sourced Services, including Our Story, "Public Content." For all content you submit to the Services other than Public Content, you grant Snap Inc. and our affiliates a worldwide, royalty-free, sublicensable, and transferable license to host, store, use, display, reproduce, modify, adapt, edit, publish, and distribute that content. This license is for the limited purpose of operating, developing, providing, promoting, and improving the Services and researching and developing new ones.

Because Public Content is inherently public and chronicles matters of public interest, the license you grant us for this content is broader. For Public Content, you grant Snap Inc., our affiliates, and our business partners all of the same rights you grant for non-Public Content in the previous paragraph, as well as a perpetual license to create derivative works from, promote, exhibit, broadcast, syndicate, publicly perform, and publicly display Public Content in any form and in any and all media or distribution methods (now known or later developed). To the extent it's necessary, when you appear in, create, upload, post, or send Public Content, you also grant Snap

Inc., our affiliates, and our business partners the unrestricted, worldwide, perpetual right and license to use your name, likeness, and voice, including in connection with commercial or sponsored content. This means, among other things, that you will not be entitled to any compensation from Snap Inc., our affiliates, or our business partners if your name, likeness, or voice is conveyed through the Services, either on the Snapchat application or on one of our business partner's platforms.

For information about how to tailor who can watch your content, please take a look at our Privacy Policy and Support Site.

While we're not required to do so, we may access, review, screen, and delete your content at any time and for any reason, including to provide and develop the Services or if we think your content violates these Terms. You alone, though, remain responsible for the content you create, upload, post, send, or store through the Service.

The Services may contain advertisements. In consideration for Snap Inc. letting you access and use the Services, you agree that we, our affiliates, and our third-party partners may place advertising on the Services. Because the Services contain content that you and other users provide us, advertising may sometimes appear near your content.

With respect to your use of Bitmoji, you grant Snap Inc., our affiliates, and our business partners a worldwide, perpetual, royalty-free, sublicensable, and transferable license to host, store, use, display, reproduce, modify, adapt, edit, publish, distribute, promote, exhibit, broadcast, syndicate, publicly perform, and distribute (a) any actual or simulated likeness, image, voice, name, poses, or other personal characteristics (collectively, your "Likeness") embodied in a Bitmoji Avatar or the Bitmoji Services, and (b) any materials you create using the Bitmoji Services, as well as the right to create and use derivative works from those materials, in any and all media or distribution methods (now known or later developed). This license is for the limited purpose of operating, developing, providing, promoting, and improving the Services and researching and developing new ones. This means, among other things, that you will not be entitled to any compensation from Snap Inc., our affiliates, or our business partners if your name, likeness, or voice is conveyed through or in connection with Bitmoji, either on the Bitmoji application or on one of our business partner's platforms.

Should you develop or be deemed to have any rights in a Bitmoji Avatar not granted by these Terms, you agree to irrevocably and unconditionally assign to Snap Inc. all of your additional right, title, and interest, including all copyrights, in and to such Bitmoji Avatar.

We always love to hear from our users. But if you provide feedback or suggestions, just know that we can use them without compensating you, and without any restriction or obligation to you.

4. The Content of Others

Much of the content on our Services is produced by users, publishers, and other third parties. Whether that content is posted publicly or sent privately, the content is the sole responsibility of the person or organization that submitted it. Although Snap Inc. reserves the right to review or remove all content that appears on the Services, we do not necessarily review all of it. So we

cannot—and do not—take responsibility for any content that others provide through the Services.

Through these Terms and our Community Guidelines, we make clear that we do not want the Services put to bad uses. But because we do not review all content, we cannot guarantee that content on the Services, or that our users' use of our Services, will always conform to our Terms or Guidelines.

5. Privacy

Your privacy matters to us. You can learn how we handle your information when you use our Services by reading our Privacy Policy. We encourage you to give the Privacy Policy a careful look because, by using our Services, you agree that Snap Inc. can collect, use, and share your information consistent with that policy.

6. Respecting Others' Rights

Snap Inc. respects the rights of others. And so should you. You therefore may not use the Services, or enable anyone else to use the Services, in a manner that:

- violates or infringes someone else's rights of publicity, privacy, copyright, trademark, or other intellectual property right.
- bullies, harasses, or intimidates.
- defames.
- spams or solicits our users.

You must also respect Snap Inc.'s rights and adhere to the Brand Guidelines, Bitmoji Brand Guidelines and any other brand guidelines published by Snap Inc. You may not do any of the following (or enable anyone else to do so):

- use branding, logos, icons, user interface elements, designs, photographs, videos, or any other materials used in our Services, except as explicitly allowed by the Brand Guidelines, Bitmoji Brand Guidelines or other brand guidelines published by Snap Inc.
- violate or infringe Snap Inc.'s copyrights, trademarks, or other intellectual property rights.
- copy, archive, download, upload, distribute, syndicate, broadcast, perform, display, make available, or otherwise use any portion of the Services or the content on the Services except as set forth in these Terms.
- use the Services, any tools provided by the Services, or any content on the Services for any commercial purposes without our consent.

In short: You may not use the Services or the content on the Services in ways that are not authorized by these Terms. Nor may you help anyone else in doing so.

7. Respecting Copyright

Snap Inc. honors copyright laws, including the Digital Millennium Copyright Act. We therefore take reasonable steps to expeditiously remove from our Services any infringing material that we become aware of. And if Snap Inc. becomes aware that one of its users has repeatedly infringed copyrights, we will take reasonable steps within our power to terminate the user's account.

We make it easy for you to report suspected copyright infringement. If you believe that anything on the Services infringes a copyright that you own or control, please report it using the form accessible through this tool. Or you may file a notice with our designated agent:

Snap Inc.
Attn: Copyright Agent
2772 Donald Douglas Loop North
Santa Monica, CA 90405
email: copyright@snap.com

Don't use this email address for anything other than reporting copyright infringement, as such emails will be ignored. To report other forms of infringement, please use the tool accessible here.

If you file a notice with our Copyright Agent, it must comply with the requirements set forth at 17 U.S.C. § 512(c)(3). That means the notice must:

- contain the physical or electronic signature of a person authorized to act on behalf of the copyright owner.
- identify the copyrighted work claimed to have been infringed.
- identify the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed, or access to which is to be disabled, and information reasonably sufficient to let us locate the material.
- provide your contact information, including your address, telephone number, and an email address.
- provide a personal statement that you have a good-faith belief that the use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.
- provide a statement that the information in the notification is accurate and, under penalty of perjury, that you are authorized to act on behalf of the copyright owner.

8. Safety

We try hard to keep our Services a safe place for all users. But we can't guarantee it. That's where you come in. By using the Services, you agree that:

- You will not use the Services for any purpose that is illegal or prohibited in these Terms.
- You will not use any robot, spider, crawler, scraper, or other automated means or interface to access the Services or extract other user's information.
- You will not use or develop any third-party applications that interact with the Services or other users' content or information without our written consent.
- You will not use the Services in a way that could interfere with, disrupt, negatively affect, or inhibit other users from fully enjoying the Services, or that could damage, disable, overburden, or impair the functioning of the Services.
- You will not use or attempt to use another user's account, username, or password without their permission.
- You will not solicit login credentials from another user.
- You will not post content that contains or links to pornography, graphic violence, threats, hate speech, or incitements to violence.
- You will not upload viruses or other malicious code or otherwise compromise the security of the Services.
- You will not attempt to circumvent any content-filtering techniques we employ, or attempt to access areas or features of the Services that you are not authorized to access.
- You will not probe, scan, or test the vulnerability of our Services or any system or network.
- You will not encourage or promote any activity that violates these Terms.

We also care about your safety while using our Services. So do not use our Services in a way that would distract you from obeying traffic or safety laws. For example, never Snap and drive. And never put yourself or others in harm's way just to capture a Snap.

9. Your Account

You are responsible for any activity that occurs in your Snapchat account. So it's important that you keep your account secure. One way to do that is to select a strong password that you don't use for any other account.

By using the Services, you agree that, in addition to exercising common sense:

- You will not create more than one account for yourself.

- You will not create another account if we have already disabled your account, unless you have our written permission to do so.
- You will not buy, sell, rent, or lease access to your Snapchat account, Snaps, a Snapchat username, or a friend link without our written permission.
- You will not share your password.
- You will not log in or attempt to access the Services through unauthorized third-party applications or clients.

If you think that someone has gained access to your account, please immediately reach out to Snapchat Support.

10. Memories

Memories is our data-storage service that makes it easier for you to reminisce anytime, anywhere. By agreeing to these Terms, you automatically enable Memories. Once Memories is enabled, it will remain enabled for as long as you maintain your Snapchat account. But you can always turn off certain Memories features through Settings.

One of the options we provide with Memories is the ability to create a restricted area by setting a passcode, which might be a PIN or a passphrase or some other mechanism. This is similar to the device-lock option you may be using on your mobile device; by setting a passcode, you make it less likely that another person who gets ahold of your device will be able to see what you saved to the restricted area of Memories. But here's a big warning: IF YOU LOSE OR FORGET YOUR MEMORIES PASSCODE, OR IF YOU ENTER THE WRONG ONE TOO MANY TIMES, YOU WILL LOSE ACCESS TO ANY CONTENT YOU SAVED IN THE RESTRICTED AREA OF MEMORIES. We don't offer any passcode recovery features for this restricted area. You are solely responsible for remembering your passcode. Please go to our Support Site for more details on passcodes.

Your content in Memories might become unavailable for any number of reasons, including things like an operational glitch or a decision on our end to terminate your account. Since we can't promise that your content will always be available, we recommend keeping a separate copy of content you save to Memories.

We make no promise that Memories will be able to accommodate your precise storage needs. We reserve the right to set storage limits for Memories, and we may change these limits from time to time in our sole discretion. And just as with our other Services, your use of Memories may take up space on your device and may incur mobile data charges.

You may not resell any Memories features. This means you can't do something like use Memories to operate your own file-storage or distribution service for other people.

11. Data Charges and Mobile Phones

You are responsible for any mobile charges that you may incur for using our Services, including text-messaging and data charges. If you're unsure what those charges may be, you should ask your service provider before using the Services.

If you change or deactivate the mobile phone number that you used to create a Snapchat account, you must update your account information through Settings within 72 hours to prevent us from sending to someone else messages intended for you.

12. Third-Party Services

If you use a service, feature, or functionality that is operated by a third party and made available through our Services (including Services we jointly offer with the third party), each party's terms will govern the respective party's relationship with you. Snap Inc. is not responsible or liable for a third party's terms or actions taken under the third party's terms.

13. Modifying the Services and Termination

We're relentlessly improving our Services and creating new ones all the time. That means we may add or remove features, products, or functionalities, and we may also suspend or stop the Services altogether. We may take any of these actions at any time, and when we do, we may not provide you with any notice beforehand.

While we hope you remain a lifelong Snapchatter, you can terminate these Terms at any time and for any reason by deleting your account.

Snap Inc. may also terminate these Terms with you at any time, for any reason, and without advanced notice. That means that we may stop providing you with any Services, or impose new or additional limits on your ability to use our Services. For example, we may deactivate your account due to prolonged inactivity, and we may reclaim your username at any time for any reason.

Regardless of who terminates these Terms, both you and Snap Inc. continue to be bound by Sections 3, 6, 9, 10, and 13-22 of the Terms.

14. Indemnity

You agree, to the extent permitted by law, to indemnify, defend, and hold harmless Snap Inc., our affiliates, directors, officers, stockholders, employees, licensors, and agents from and against any and all complaints, charges, claims, damages, losses, costs, liabilities, and expenses (including attorneys' fees) due to, arising out of, or relating in any way to: (a) your access to or use of the Services; (b) your content; and (c) your breach of these Terms.

15. Disclaimers

We try to keep the Services up and running and free of annoyances. But we make no promises that we will succeed.

THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND TO THE EXTENT PERMITTED BY LAW WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. IN ADDITION, WHILE Snap Inc. ATTEMPTS TO PROVIDE A GOOD USER EXPERIENCE, WE DO NOT REPRESENT OR WARRANT THAT: (A) THE SERVICES WILL ALWAYS BE SECURE, ERROR-FREE, OR TIMELY; (B) THE SERVICES WILL ALWAYS FUNCTION WITHOUT DELAYS, DISRUPTIONS, OR IMPERFECTIONS; OR (C) THAT ANY CONTENT, USER CONTENT, OR INFORMATION YOU OBTAIN ON OR THROUGH THE SERVICES WILL BE TIMELY OR ACCURATE.

Snap Inc. TAKES NO RESPONSIBILITY AND ASSUMES NO LIABILITY FOR ANY CONTENT THAT YOU, ANOTHER USER, OR A THIRD PARTY CREATES, UPLOADS, POSTS, SENDS, RECEIVES, OR STORES ON OR THROUGH OUR SERVICES. YOU UNDERSTAND AND AGREE THAT YOU MAY BE EXPOSED TO CONTENT THAT MIGHT BE OFFENSIVE, ILLEGAL, MISLEADING, OR OTHERWISE INAPPROPRIATE, NONE OF WHICH Snap Inc. WILL BE RESPONSIBLE FOR.

16. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, Snap Inc. AND OUR MANAGING MEMBERS, SHAREHOLDERS, EMPLOYEES, AFFILIATES, LICENSORS, AGENTS, AND SUPPLIERS WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR MULTIPLE DAMAGES, OR ANY LOSS OF PROFITS OR REVENUES, WHETHER INCURRED DIRECTLY OR INDIRECTLY, OR ANY LOSS OF DATA, USE, GOODWILL, OR OTHER INTANGIBLE LOSSES, RESULTING FROM: (A) YOUR ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THE SERVICES; (B) THE CONDUCT OR CONTENT OF OTHER USERS OR THIRD PARTIES ON OR THROUGH THE SERVICES; OR (C) UNAUTHORIZED ACCESS, USE, OR ALTERATION OF YOUR CONTENT, EVEN IF Snap Inc. HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL Snap Inc.'S AGGREGATE LIABILITY FOR ALL CLAIMS RELATING TO THE SERVICES EXCEED THE GREATER OF $100 USD OR THE AMOUNT YOU PAID Snap Inc., IF ANY, IN THE LAST 12 MONTHS.

17. Arbitration, Class-Action Waiver, and Jury Waiver

PLEASE READ THE FOLLOWING PARAGRAPHS CAREFULLY BECAUSE THEY REQUIRE YOU AND Snap Inc. TO AGREE TO RESOLVE ALL DISPUTES BETWEEN US THROUGH BINDING INDIVIDUAL ARBITRATION.

a. Applicability of Arbitration Agreement. You and Snap Inc. agree that all claims and disputes (whether contract, tort, or otherwise), including all statutory claims and disputes, arising out of or relating to these Terms or the use of the Services that cannot be resolved in small claims court will be resolved by binding arbitration on an individual basis, except that you and Snap Inc. are not required to arbitrate any dispute in which either party seeks equitable relief for the alleged unlawful use of copyrights, trademarks, trade

names, logos, trade secrets, or patents. To be clear: The phrase "all claims and disputes" also includes claims and disputes that arose between us before the effective date of these Terms.

b. Arbitration Rules. The Federal Arbitration Act governs the interpretation and enforcement of this dispute-resolution provision. Arbitration will be initiated through the American Arbitration Association ("AAA") and will be governed by the AAA Consumer Arbitration Rules, available here as of the date of these Terms, or by calling the AAA at 1-800-778-7879. If the AAA is not available to arbitrate, the parties will select an alternative arbitral forum. The rules of the arbitral forum will govern all aspects of this arbitration, except to the extent those rules conflict with these Terms. The arbitration will be conducted by a single neutral arbitrator. Any claims or disputes where the total amount sought is less than $10,000 USD may be resolved through binding non-appearance-based arbitration, at the option of the party seeking relief. For claims or disputes where the total amount sought is $10,000 USD or more, the right to a hearing will be determined by the arbitral forum's rules. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

c. Additional Rules for Non-appearance Arbitration. If non-appearance arbitration is elected, the arbitration will be conducted by telephone, online, written submissions, or any combination of the three; the specific manner will be chosen by the party initiating the arbitration. The arbitration will not involve any personal appearance by the parties or witnesses unless the parties mutually agree otherwise.

d. Fees. If you choose to arbitrate with Snap Inc., you will not have to pay any fees to do so. That is because Snap Inc. will reimburse you for your filing fee and the AAA's Consumer Arbitration Rules provide that any hearing fees and arbitrator compensation are our responsibility. To the extent another arbitral forum is selected, Snap Inc. will pay that forum's fees as well.

e. Authority of the Arbitrator. The arbitrator will decide the jurisdiction of the arbitrator and the rights and liabilities, if any, of you and Snap Inc. The dispute will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator will have the authority to grant motions dispositive of all or part of any claim or dispute. The arbitrator will have the authority to award monetary damages and to grant any non-monetary remedy or relief available to an individual under law, the arbitral forum's rules, and the Terms. The arbitrator will issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and Snap Inc.

f. Waiver of Jury Trial. YOU AND Snap Inc. WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO GO TO COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY. You and Snap Inc. are instead electing to have claims and disputes resolved by arbitration. Arbitration procedures are typically more limited, more efficient, and less costly than rules applicable in court and are subject to very limited review by a

court. In any litigation between you and Snap Inc. over whether to vacate or enforce an arbitration award, YOU AND Snap Inc. WAIVE ALL RIGHTS TO A JURY TRIAL, and elect instead to have the dispute be resolved by a judge.

g. Waiver of Class or Consolidated Actions. ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS. CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER. If, however, this waiver of class or consolidated actions is deemed invalid or unenforceable, neither you nor we are entitled to arbitration; instead all claims and disputes will be resolved in a court as set forth in Section 18.

h. Right to Waive. Any rights and limitations set forth in this arbitration agreement may be waived by the party against whom the claim is asserted. Such waiver will not waive or affect any other portion of this arbitration agreement.

i. Opt-out. You may opt out of this arbitration agreement. If you do so, neither you nor Snap Inc. can force the other to arbitrate. To opt out, you must notify Snap Inc. in writing no later than 30 days after first becoming subject to this arbitration agreement. Your notice must include your name and address, your Snapchat username and the email address you used to set up your Snapchat account (if you have one), and an unequivocal statement that you want to opt out of this arbitration agreement. You must either mail your opt-out notice to this address: Snap Inc., ATTN: Arbitration Opt-out, 2772 Donald Douglas Loop North, Santa Monica, CA 90405, or email the opt-out notice to arbitration-opt-out@snap.com.

j. Small Claims Court. Notwithstanding the foregoing, either you or Snap Inc. may bring an individual action in small claims court.

k. Arbitration Agreement Survival. This arbitration agreement will survive the termination of your relationship with Snap Inc.

18. Exclusive Venue

To the extent that these Terms allow you or Snap Inc. to initiate litigation in a court, both you and Snap Inc. agree that all claims and disputes (whether contract, tort, or otherwise), including statutory claims and disputes, arising out of or relating to the Terms or the use of the Services will be litigated exclusively in the United States District Court for the Central District of California. If, however, that court would lack original jurisdiction over the litigation, then all such claims and disputes will be litigated exclusively in the Superior Court of California, County of Los Angeles. You and Snap Inc. consent to the personal jurisdiction of both courts.

19. Choice of Law

Except to the extent they are preempted by U.S. federal law, the laws of California, other than its conflict-of-laws principles, govern these Terms and any claims and disputes (whether contract, tort, or otherwise) arising out of or relating to these Terms or their subject matter.

20. Severability

If any provision of these Terms is found unenforceable, then that provision will be severed from these Terms and not affect the validity and enforceability of any remaining provisions.

21. Additional Terms for Specific Services

Given the breadth of our Services, we sometimes need to craft additional terms and conditions for specific Services. Those additional terms and conditions, which will be available with the relevant Services, then become part of your agreement with us if you use those Services. If any part of those additional terms and conditions conflicts with these Terms, the additional terms and conditions will prevail.

22. Final Terms

- These Terms (together with any additional terms applicable to specific Services you use) make up the entire agreement between you and Snap Inc., and supersede any prior agreements.
- These Terms do not create or confer any third-party beneficiary rights.
- If we do not enforce a provision in these Terms, it will not be considered a waiver.
- We reserve all rights not expressly granted to you.
- You may not transfer any of your rights or obligations under these Terms without our consent.

Contact Us

Snap Inc. welcomes comments, questions, concerns, or suggestions. Please contact us by visiting https://support.snapchat.com/.

Snap Inc. is located in the United States at 2772 Donald Douglas Loop North, Santa Monica, California 90405.

SoundCloud
https://soundcloud.com/terms-of-use

Welcome to SoundCloud®, a service provided by SoundCloud Limited ("SoundCloud", "we" "our", or "us").

These Terms of Use govern your use of soundcloud.com and m.soundcloud.com (together, the "Website"), our mobile and desktop apps (our "Apps") and all related players, widgets, tools, features, applications, data, software, APIs (which may also be subject to separate API Terms of Use) and other services provided by SoundCloud (the "Services").

These Terms of Use, together with our Community Guidelines and any other terms specifically referred to in any of those documents, all of which are incorporated by reference into these Terms of Use, constitute a legally binding contract (the "Agreement"), between you and SoundCloud in relation to your use of the Website, Apps and Services (together, the "Platform").

Please also be sure to review our Privacy Policy and Cookies Policy for more information on how we collect and use data relating to the use and performance of the Platform, as well as our responsibilities and your rights in relation to any processing of your personal data.

These Terms of Use consist of the following sections:

- Acceptance of Terms of Use Basically, by using SoundCloud® you accept our Terms of Use and Community Guidelines and agree to abide by them.
- Changes to Terms of Use This section explains that our terms of Use may change from time to time.
- Description of the Platform This provides a general description of the Platform, its features and functionality.
- Your SoundCloud account This section explains your responsibilities should you choose to register for a SoundCloud® account.
- Your Use of the platform This section sets out your right to use the Platform, and the conditions that apply to your use of the Platform.
- Your content This section deals with ownership of your content, and includes your agreement not to upload anything that infringes on anyone else's rights.
- Grant of license This section explains how your content will be used on SoundCloud® and the permissions that you grant by uploading your content - for example, the right for other users to listen to your sounds.
- Representations and warranties This section includes important promises and guarantees that you give when uploading content to SoundCloud® - in particular, your promise that everything you upload and share is owned by you and won't infringe anyone else's rights.

- Liability for content This section explains that SoundCloud is a hosting service and that its users are solely liable for material that they upload to SoundCloud®.

- Reporting infringements This section explains how to notify us of any content on SoundCloud® that you believe infringes your copyright or any other intellectual property right, or that is unlawful, abusive, defamatory or otherwise contrary to our Terms of Use or Community Guidelines. You can find further information on reporting copyright infringement on our Copyright Information pages.

- Third party websites and services Through SoundCloud® you may have access to other websites and services. This section explains that these are separate third party services that are not under the control of SoundCloud.

- Blocking and removal of content This section makes it clear that SoundCloud may block or remove content from the Platform.

- Repeat infringers Users who repeatedly infringe third party rights or breach our Terms of Use or Community Guidelines risk having their SoundCloud® accounts suspended or terminated, as explained in this section.

- Disclaimer This section explains that SoundCloud® cannot give any guarantees that the Platform will always be available – sometimes even a platform as awesome as ours will have a few problems.

- Limitation of liability This section explains some of those things that SoundCloud will not be liable for. Please make sure you read and understand this section.

- Indemnification If you use the Platform in a way that results in damage to us, you will need to take responsibility for that.

- Data protection, privacy and cookies It is really important to us that you understand how we use your personal information. All information is collected, stored and used in accordance with our Privacy Policy, so please make sure that you read and understand that policy. Like most other websites, we also use cookies to help us analyze how people use SoundCloud, so that we can keep improving our service. Our use of cookies is explained in our Cookies Policy.

- Meetups This section deals with SoundCloud® meetups and explains that these are not "official" SoundCloud events, so we cannot be responsible for anything that happens at meetups.

- Competitions and other promotions This section deals with competitions, contests and sweepstakes on SoundCloud®. These are not run by SoundCloud, and therefore we cannot be responsible for them. If you want to run your own competition on SoundCloud, make sure you read and understand our Competition Terms.

- Use of SoundCloud players and widget This section includes a few restrictions on how you can use our players and widgets – basically, don't try to use our players to create a new music or audio streaming service.

- Subscriptions and gift codes This section links you to information explaining how to purchase "Pro" and "Pro Unlimited" plans and "SoundCloud Go" subscriptions as well as gift codes and how you can cancel your purchases in certain circumstances.

- Changes to the Platform, accounts and pricing From time to time, we may need to make some changes to SoundCloud®. This section explains your rights in this situation.

- Termination This section explains how you can terminate your SoundCloud® account, and the grounds on which we can terminate your use of SoundCloud®.

- Assignment to third parties This section deals with SoundCloud's right to transfer this agreement to someone else.

- Severability This is a standard legal provision, which says that any term that is not valid will be removed from the agreement without affecting the validity of the rest of the agreement.

- Entire agreement Your use of SoundCloud® is governed by these Terms of Use, our Privacy Policy, Cookies Policy and Community Guidelines. Any changes need to be made in writing.

- Third party rights These Terms of Use apply to the relationship between you and SoundCloud only.

- Applicable law and jurisdiction All of our documents are generally governed by German law.

- Disclosures This section provides information about SoundCloud, including how to contact us.

Acceptance of Terms of Use

Please read these Terms of Use, Privacy Policy, Cookies Policy and Community Guidelines, very carefully. If you do not agree to any of the provisions set out in those documents, you should not use the Website, Apps or any of the Services. By accessing or using the Platform, registering an account, or by viewing, accessing, streaming, uploading or downloading any information or content from or to the Platform, you represent and warrant that you have read and understood the Terms of Use and Community Guidelines, will abide by them, and that you are either 18 years of age or more, or the applicable age of majority in your jurisdiction, or if you are under 18 years of age or the age of majority in your jurisdiction, you are 16 years of age or more if you reside in the European Union or 13 years of age or more if you reside in the United States or anywhere else.

Changes to Terms of Use

We reserve the right to change, alter, replace or otherwise modify these Terms of Use at any time, for example to address legal or regulatory changes or changes to features or functionality made available through the Platform, in our discretion. The date of last modification is stated at the end of these Terms of Use. It is your responsibility to check this page from time to time for updates.

When we make any material changes to these Terms of Use, we will provide you with prominent notice under the circumstances, including for example displaying a notice within the Platform and/or by sending you an email to the email address that you have provided us or a message to your SoundCloud account, and the revised Terms of Use will become effective two (2) weeks after such notification.

You will have no obligation to continue using the Platform following any such notification, but if you do not terminate your account as described in the Termination section below during such two (2) week period, your continued use of the Platform after the end of that two (2) week period will constitute your acceptance of the revised Terms of Use.

Description of the Platform

The Platform is a hosting service. Registered users of the Platform may submit, upload and post audio, text, photos, pictures, graphics, comments, and other content, data or information ("Content"), which will be stored by SoundCloud at the direction of such registered users, and may be shared and distributed by such registered users, and other users of the Platform, using the tools and features provided as part of the Platform and accessible via the Website, Apps and elsewhere. The Platform also enables registered users to interact with one another and to contribute to discussions, and enables any user of the Website, Apps or certain Services (who may or may not be registered users of the Platform) to view, listen to and share Content uploaded and made available by registered users.

The Platform also includes social and interactive features that enable users to engage with and learn from the SoundCloud community in order to build a following and ensure you get the content that inerests you most. For example, users who upload content to SoundCloud will gain access to our creator stats feature, which provides creators with insights into how the content they upload fares among users, including which users are top listeners and downloaders of such content.

Some features of our Platform are only available to registered users who subscribe to a certain Service (see Subscriptions and Gift Codes below). SoundCloud however remains free for users that choose not to subscribe to such Services. In order to make the Platform available for free and provide you with personally relevant features, we serve tailored ads on the Platform on behalf of third party advertisers. To that end, we use information that you make available to us when you interact with the Platform to inform the nature of the ads we show you and provide you with a customized experience. More information on how we use data to show you personalized ads is described in our Privacy Policy.

We may, from time to time, release new tools and resources on the Website, release new versions of our Apps, or introduce other services and/or features for the Platform. Any new

services and features will be subject to these Terms of Use as well as any additional terms and conditions that we may release for those specific services or features.

Your SoundCloud account

You are not obliged to register to use the Platform. However, access to the Apps and certain Services is only available to registered users. As an example, our App, SoundCloud Pulse, enables registered users, who upload and make available their Content to other users, to receive instant feedback on the performance of their tracks, communicate with their listeners, and manage their Content anytime.

In order for you to enagage with other SoundCloud listeners and creators, we enable you to create and personalize a public profile on SoundCloud. To enable you to do that, you must provide us with the information you want to display on such profile.

In order to help you to navigate and discover content on the Platform that interests you, as a registered user you will also receive auto-generated personalized recommendations of other content that might appeal to you, based on your listening habits.

When you register to use the Platform, you will provide us with your email address, and will choose a username and password for your account. You must ensure that the email address that you provide is, and remains, valid. Your email address and any other information you chose to provide about yourself will be treated in accordance with our Privacy Policy.

You are solely responsible for maintaining the confidentiality and security of your username and password, and you will remain responsible for all use of your username and password, and all activity emanating from your account, whether or not such activity was authorized by you.

If your username or password is lost or stolen, or if you believe that your account has been accessed by unauthorized third parties, you are advised to notify SoundCloud in writing, and should change your password at the earliest possible opportunity.

We reserve the right to disallow, cancel, remove or reassign certain usernames and permalinks in appropriate circumstances, as determined by us in our sole discretion, and may, with or without prior notice, suspend or terminate your account if activities occur on that account which, in our sole discretion, would or might constitute a violation of these Terms of Use or our Community Guidelines, or an infringement or violation of the rights of any third party, or of any applicable laws or regulations.

You may terminate your account at any time as described in the Termination section below.

Your use of the Platform

Subject to your strict compliance with these Terms of Use and our Community Guidelines at any and all times during your use of the Platform, SoundCloud grants you a limited, personal, non-exclusive, revocable, non-assignable and non-transferable right and license to use the Platform in order to view Content uploaded and posted to the Website, to listen to audio Content streamed from the Platform or offline and to share and download audio Content using the features of the

Platform where the appropriate functionality has been enabled by the user who uploaded the relevant Content (the "Uploader"), and subject to the territorial availability of that feature and audio Content.

In addition, if you register to use the Platform, and subject to your strict compliance with these Terms of Use and our Community Guidelines at any and all times during your use of the Platform, SoundCloud grants you a limited, personal, non-exclusive, revocable, non-assignable and non-transferable right and license to:

(i) submit, upload or post Content to and keep such Content available on the Platform strictly as permitted in accordance with these Terms of Use and any other applicable terms posted on the Website from time to time;

(ii) participate in the community areas and communicate with other members of the SoundCloud® community strictly in accordance with these Terms of Use and our Community Guidelines; and

(iii) use Apps and other Services provided as part of the Platform strictly as permitted in accordance with these Terms of Use and any other terms applicable to those Apps or Services from time to time.

The above licenses are conditional upon your strict compliance with these Terms of Use and our Community Guidelines at any and all times during your use of the Platform, including, without limitation, the following:

(i) You must not copy, rip or capture, or attempt to copy, rip or capture, any audio Content from the Platform or any part of the Platform, other than by means of download or store for offline listening in circumstances where the relevant Uploader has elected to permit downloads or offline listening of the relevant item of Content.

(ii) You must not adapt, copy, republish, make available or otherwise communicate to the public, display, perform, transfer, share, distribute or otherwise use or exploit any Content on or from the Platform at any and all times, except (i) where such Content is Your Content at any and all times during your use of the applicable Content, or (ii) as permitted under these Terms of Use, and within the parameters set by the Uploader (for example, under the terms of Creative Commons licenses selected by the Uploader).

(iii) You must not use any Content (other than Your Content) in any way that is designed to create a separate content service or that replicates any part of the Platform offering.

(iv) You must not employ scraping or similar techniques to aggregate, repurpose, republish or otherwise make use of any Content.

(v) You must not employ any techniques or make use of any services, automated or otherwise, designed to misrepresent the popularity of Your Content on the Platform, or to misrepresent your activity on the Platform, including without limitation by the use of bots, botnets, scripts, apps, plugins, extensions or other automated means to register accounts, log in, add followers to your account, play Content, follow or unfollow other users, send messages, post comments, or

otherwise to act on your behalf, particularly where such activity occurs in a multiple or repetitive fashion. You must not offer or promote the availability of any such techniques or services to any other users of the Platform.

(vi) You must not alter or remove, or attempt to alter or remove, any trademark, copyright or other proprietary or legal notices contained in, or appearing on, the Platform or any Content appearing on the Platform (other than Your Content).

(vii) You must not, and must not permit any third party to, copy or adapt the object code of the Website or any of the Apps or Services, or reverse engineer, reverse assemble, decompile, modify or attempt to discover any source or object code of any part of the Platform, or circumvent or attempt to circumvent or copy any copy protection mechanism or territorial restrictions or access any rights management information pertaining to Content other than Your Content.

(viii) You must not use the Platform to upload, post, store, transmit, display, copy, distribute, promote, make available, continue to make available or otherwise communicate to the public:

- any Content that is abusive, libellous, defamatory, pornographic or obscene, that promotes or incites violence, terrorism, illegal acts, or hatred on the grounds of race, ethnicity, cultural identity, religious belief, disability, gender, identity or sexual orientation, or is otherwise objectionable in SoundCloud's reasonable discretion;

- any information, Content or other material that violates, plagiarizes, misappropriates or infringes the rights of third parties including, without limitation, copyright, trademark rights, rights of privacy or publicity, confidential information or any other right; or

- any Content that violates, breaches or is contrary to any law, rule, regulation, court order or is otherwise is illegal or unlawful in SoundCloud's reasonable opinion;

- any material of any kind that contains any virus, Trojan horse, spyware, adware, malware, bot, time bomb, worm, or other harmful or malicious component, which or might overburden, impair or disrupt the Platform or servers or networks forming part of, or connected to, the Platform, or which does or might restrict or inhibit any other user's use and enjoyment of the Platform; or

- any unsolicited or unauthorized advertising, promotional messages, spam or any other form of solicitation.

(ix) You must not commit or engage in, or encourage, induce, solicit or promote, any conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law or regulation.

(x) You must not rent, sell or lease access to the Platform, or any Content on the Platform, although this shall not prevent you from including links from Your Content to any legitimate online download store from where any item of Your Content may be purchased.

(xi) You must not deliberately impersonate any person or entity or otherwise misrepresent your affiliation with a person or entity, for example, by registering an account in the name of another person or company, or sending messages or making comments using the name of another person.

(xii) You must not stalk, exploit, threaten, abuse or otherwise harass another user, or any SoundCloud employee.

(xiii) You must not use or attempt to use another person's account, password, or other information, unless you have express permission from that other person.

(xiv) You must not sell or transfer, or offer to sell or transfer, any SoundCloud account to any third party without the prior written approval of SoundCloud.

(xv) You must not collect or attempt to collect personal data, or any other kind of information about other users, including without limitation, through spidering or any form of scraping.

(xvi) You must not violate, circumvent or attempt to violate or circumvent any data security measures employed by SoundCloud or any Uploader; access or attempt to access data or materials which are not intended for your use; log into, or attempt to log into, a server or account which you are not authorized to access; attempt to scan or test the vulnerability of SoundCloud's servers, system or network or attempt to breach SoundCloud's data security or authentication procedures; attempt to interfere with the Website or the Services by any means including, without limitation, hacking SoundCloud's servers or systems, submitting a virus, overloading, mail-bombing or crashing. Without limitation to any other rights or remedies of SoundCloud under these Terms of Use, SoundCloud reserves the right to investigate any situation that appears to involve any of the above, and may report such matters to, and co-operate with, appropriate law enforcement authorities in prosecuting any users who have participated in any such violations.

You agree to comply with the above conditions at any and all times during your use of the Platform, and acknowledge and agree that SoundCloud has the right, in its sole discretion, to terminate your account or take such other action as we see fit if you breach any of the above conditions or any of the other terms of these Terms of Use. This may include taking court action and/or reporting offending users to the relevant authorities.

Your content

Any and all audio, text, photos, pictures, graphics, comments, and other content, data or information that you upload, store, transmit, submit, exchange or make available to or via the Platform (hereinafter "Your Content") is generated, owned and controlled solely by you, and not by SoundCloud.

SoundCloud does not claim any ownership rights in Your Content, and you hereby expressly acknowledge and agree that Your Content remains your sole responsibility.

Without prejudice to the conditions set forth in Your Use of the Platform you must not upload, store, distribute, send, transmit, display, perform, make available, continue to make available or otherwise communicate to the public any Content to which you do not hold the necessary rights. In particular, any unauthorized use of copyright protected material within Your Content

(including by way of reproduction, distribution, modification, adaptation, public display, public performance, preparation of derivative works, making available or otherwise communicating to the public via the Platform), independent of wheteher it is or becomes unauthorized at a later point, may constitute an infringement of third party rights and is *strictly prohibited*. Any such infringements may result in termination of your access to the Platform as described in the Repeat Infringers section below, and may also result in civil litigation or criminal prosecution by or on behalf of the relevant rightsholder.

We may, from time to time, invite or provide you with means to provide feedback regarding the Platform, and in such circumstances, any feedback you provide will be deemed non-confidential and SoundCloud shall have the right, but not the obligation, to use such feedback on an unrestricted basis.

Grant of license

By uploading or posting Your Content to the Platform, you initiate an automated process to transcode any audio Content and direct SoundCloud to store Your Content on our servers, from where you may control and authorize the use, ways of reproduction, transmission, distribution, public display, public performance, making available (including whether users will be permitted to listen to your Content offline) and other communication to the public of Your Content on the Platform and elsewhere using the Services. To the extent it is necessary in order for SoundCloud to provide you with any of the aforementioned hosting services, to undertake any of the tasks set forth in these Terms of Use, including the distribution of advertising or other promotional material on our Platform and/or to enable your use of the Platform, you hereby grant such licenses to SoundCloud on a limited, worldwide, non-exclusive, royalty-free and fully paid basis.

By uploading Your Content to the Platform, you also grant a limited, worldwide, non-exclusive, royalty-free, fully paid up, license to other users of the Platform, and to operators and users of any other websites, apps and/or platforms to which Your Content has been shared or embedded using the Services ("Linked Services"), to use, copy, listen to offline, repost, transmit or otherwise distribute, publicly display, publicly perform, adapt, prepare derivative works of, compile, make available and otherwise communicate to the public, Your Content utilizing the features of the Platform from time to time, and within the parameters set by you using the Services. You can limit and restrict the availability of certain of Your Content to other users of the Platform, and to users of Linked Services, at any time using the permissions tab in the track edit section for each sound you upload, subject to the provisions of the Disclaimer section below. Notwithstanding the foregoing, nothing in these Terms of Use grants any rights to any other user of the Platform with respect to any proprietary name, logo, trademark or service mark uploaded by you as part of Your Content (for example, your profile picture) ("Marks"), other than the right to reproduce, publicly display, make available and otherwise communicate to the public those Marks, automatically and without alteration, as part of the act of reposting sounds with which you have associated those Marks.

The licenses granted in this section are granted separately with respect to each item of Your Content that you upload to the Platform. Licenses with respect to audio Content, and any images or text within your account, will (subject to the following paragraph of these Terms of Use) terminate automatically when you remove such Content from your account. Licenses with

respect to comments or other contributions that you make on the Platform will be perpetual and irrevocable, and will continue notwithstanding any termination of your account.

Removal of audio Content from your account will automatically result in the deletion of the relevant files from SoundCloud's systems and servers. However, notwithstanding the foregoing, you hereby acknowledge and agree that once Your Content is distributed to a Linked Service, SoundCloud is not obligated to ensure the deletion of Your Content from any servers or systems operated by the operators of any Linked Service, or to require that any user of the Platform or any Linked Service deletes any item of Your Content. Furthermore, if you authorize any of Your Content to be available for offline listening, after deletion of an item of Your Content or removal from the ability for other users to listen to the applicable Content offline, the applicable Content may still be temporarily available to other users of the Platform who saved the applicable Content for offline listening on their devices, but no longer than 30 days from the time of deletion.

Any Content other than Your Content is the property of the relevant Uploader, and is or may be subject to copyright, trademark rights or other intellectual property or proprietary rights. Such Content may not be downloaded, reproduced, distributed, transmitted, re-uploaded, republished, displayed, sold, licensed, made available or otherwise communicated to the public or exploited for any purposes except via the features of the Platform from time to time and within the parameters set by the Uploader on the Platform or with the express written consent of the Uploader. Where you repost another user's Content, or include another user's Content in a playlist or station or where you listen to another user's Content offline, you acquire no ownership rights whatsoever in that Content. Subject to the rights expressly granted in this section, all rights in Content are reserved to the relevant Uploader.

Representations and warranties

You hereby represent and warrant to SoundCloud as follows: (i) Your Content, and each and every part thereof, is an original work by you, or you have obtained all rights, licenses, consents and permissions necessary in order to use at any and all times during any applicable use, and (if and where relevant) to authorize SoundCloud to use, Your Content pursuant to these Terms of Use, including, without limitation, the right to upload, reproduce, store, transmit, distribute, share, publicly display, publicly perform, make available (including for listening offline) and otherwise communicate to the public Your Content, and each and every part thereof, on, through or via the Platform, any and all Services and any Linked Services.

(ii) Your Content and the availability thereof on the Platform does not and will not infringe or violate the rights of any third party, including, without limitation, any intellectual property rights, performers' rights, rights of privacy or publicity, or rights in confidential information.

(iii) You have obtained any and all necessary consents, permissions and/or releases from any and all persons appearing in Your Content in order to include their name, voice, performance or likeness in Your Content and to publish the same on the Platform and via any Linked Services.

(iv) Your Content, including any comments that you may post on the Website, is not and will not be unlawful, abusive, libellous, defamatory, pornographic or obscene, and will not promote or

incite violence, terrorism, illegal acts, or hatred on the grounds of race, ethnicity, cultural identity, religious belief, disability, gender, identity or sexual orientation.

(v) Your Content does not and will not create any liability on the part of SoundCloud, its subsidiaries, affiliates, successors, and assigns, and their respective employees, agents, directors, officers and/or shareholders. SoundCloud reserves the right to remove Your Content, suspend or terminate your access to the Platform and/or pursue all legal remedies if we believe that any of Your Content breaches any of the foregoing representations or warranties, or otherwise infringes another person's rights or violates any law, rule or regulation.

Liability for content

You hereby acknowledge and agree that SoundCloud (i) stores content and other information at the direction, request and with the authorization of its users, (ii) acts merely as a passive conduit and/or host for the uploading, storage and distribution of such content, and (iii) plays no active role and gives no assistance in the presentation or use of the content. You are solely responsible for all of Your Content that you upload, post or distribute to, on or through the Platform, and to the extent permissible by law, SoundCloud excludes all liability with respect to all content (including Your Content) and the activities of its users with respect thereto.

You hereby acknowledge and agree that SoundCloud cannot and does not review the content created or uploaded by its users, and neither SoundCloud nor its subsidiaries, affiliates, successors, assigns, employees, agents, directors, officers and shareholders has any obligation, and may, but does not undertake or assume any duty to, monitor the Platform for content that is inappropriate, that does or might infringe any third party rights, or has otherwise been uploaded in breach of these Terms of Use or applicable law.

SoundCloud and its subsidiaries, affiliates, successors, assigns, employees, agents, directors, officers and shareholders hereby exclude, to the fullest extent permitted by law, any and all liability which may arise from any content uploaded to the Platform by users, including, but not limited to, any claims for infringement of intellectual property rights, rights of privacy or publicity rights, any claims relating to publication of abusive, defamatory, pornographic, or obscene material, or any claims relating to the completeness, accuracy, currency or reliability of any information provided by users of the Platform. By using the Platform, you irrevocably waive the right to assert any claim with respect to any of the foregoing against SoundCloud or any of its subsidiaries, affiliates, successors, assigns, employees, agents, directors, officers or shareholders.

Reporting infringements

If you discover any content on the Platform that you believe infringes your copyright, please report this to us using any of the methods outlined on our Copyright Information pages.

If you would prefer to send us your own written notification, please make sure that you include the following information:

- a statement that you have identified Content on SoundCloud® that infringes your copyright or the copyright of a third party on whose behalf you are entitled to act;

- a description of the copyright work(s) that you claim have been infringed;
- a description of the Content that you claim is infringing and the SoundCloud URL(s) where such Content can be located;
- your full name, address and telephone number, a valid email address on which you can be contacted, and your SoundCloud® user name if you have one;
- a statement by you that you have a good faith belief that the disputed use of the material is not authorized by the copyright owner, its agent, or the law; and
- a statement by you that the information in your notice is accurate and that you are authorized to act on behalf of the owner of the exclusive right that is allegedly infringed;

In addition, if you wish for your notice to be considered as a notice pursuant to the United States Digital Millennium Copyright Act 17 U.S.C. §512(c), please also include the following:

- with respect to your statement that you are authorized to act on behalf of the owner of the exclusive right that is allegedly infringed, confirmation that such statement is made under penalty of perjury; and
- your electronic or physical signature (which may be a scanned copy).

Your notice should be sent to us by email to copyright@soundcloud.com and/or by mail to the following address:

SoundCloud Ltd Rheinsberger Str. 76/77 10115 Berlin Germany Attn: Copyright Team

If you wish for your notice to be considered as a notice pursuant to the United States Digital Millennium Copyright Act 17 U.S.C. §512(c), your notice should be sent to SoundCloud's designated copyright agent by email to copyrightagent@soundcloud.com and/or by mail to the following address:

SoundCloud Ltd c/o Music Reports Inc 21122 Erwin Street Woodland Hills CA 91367 USA Attn: Copyright Agent Tel: +1 818 558 1400 Fax: +1 818 558 3484

The foregoing process applies to copyright only. If you discover any Content that you believe to be in violation of your trademark rights, please report this to us by email at legal@soundcloud.com. In all other cases, if you discover Content that infringes or violates any of your other rights, which you believe is defamatory, pornographic, obscene, racist or otherwise liable to cause widespread offense, or which constitutes impersonation, abuse, spam or otherwise violates these Terms of Use, our Community Guidelines or applicable law, please report this to us at legal [at] soundcloud.com.

Third party websites and services

The Platform may provide you with access to third party websites, databases, networks, servers, information, software, programs, systems, directories, applications, products or services, including without limitation, linked services (hereinafter "External Services").

SoundCloud does not have or maintain any control over External Services, and is not and cannot be responsible for their content, operation or use. By linking or otherwise providing access to any External Services, SoundCloud does not give any representation, warranty or endorsement, express or implied, with respect to the legality, accuracy, quality or authenticity of content, information or services provided by such External Services.

External Services may have their own terms of use and/or privacy policy, and may have different practices and requirements to those operated by SoundCloud with respect to the Platform. You are solely responsible for reviewing any terms of use, privacy policy or other terms governing your use of these External Services, which you use at your own risk. You are advised to make reasonable enquiries and investigations before entering into any transaction, financial or otherwise, and whether online or offline, with any third party related to any External Services.

External services

You are solely responsible for taking the precautions necessary to protect yourself from fraud when using External Services, and to protect your computer systems from viruses, worms, Trojan horses, and other harmful or destructive content and material that may be included on or may emanate from any External Services.

SoundCloud disclaims any and all responsibility or liability for any harm resulting from your use of External Services, and you hereby irrevocably waive any claim against SoundCloud with respect to the content or operation of any External Services.

Blocking and removal of content

Notwithstanding the fact that SoundCloud has no legal obligation to monitor the content on the Platform, SoundCloud reserves the right to block, remove or delete any content at any time, and to limit or restrict access to any content, for any reason and without liability, including without limitation, if we have reason to believe that such content does or might infringe the rights of any third party, has been uploaded or posted in breach of these Terms of Use, our Community Guidelines or applicable law, or is otherwise unacceptable to SoundCloud.

Please also note that individual Uploaders have control over the audio content that they store in their account from time to time, and may remove any or all audio content or other content without notice. You have no right of continued access to any particular item of content and SoundCloud shall have no liability in the event that you are unable to access an item of content due to its removal from the Platform, whether by SoundCloud or the relevant uploader.

Repeat infringers

SoundCloud will suspend or terminate your access to the Platform if SoundCloud determines, in its reasonable discretion, that you have repeatedly breached these Terms of Use or our Community Guidelines.

If we receive a valid notification from a third party in accordance with our reporting processes or applicable law that any of Your Content infringes the copyright or other rights of such third party, or if we believe that your behavior violates our Community Guidelines, we will send you a written warning to this effect. Any user that receives more than two of these warnings is liable to have their access to the Platform terminated forthwith.

We will also suspend or terminate your account without warning if ordered to do so by a court, and/or in other appropriate circumstances, as determined by SoundCloud at its discretion. Please note we do not offer refunds to Subscription account holders whose accounts are terminated as a result of repeated infringement or any violation of these Terms of Use or our Community Guidelines.

Disclaimer

THE PLATFORM, INCLUDING, WITHOUT LIMITATION, THE WEBSITE, THE APPS AND ALL CONTENT AND SERVICES ACCESSED THROUGH OR VIA THE WEBSITE, THE APPS, THE SERVICES OR OTHERWISE, ARE PROVIDED "AS IS", "AS AVAILABLE", AND "WITH ALL FAULTS".

WHILST SOUNDCLOUD USES REASONABLE ENDEAVORS TO CORRECT ANY ERRORS OR OMISSIONS IN THE PLATFORM AS SOON AS PRACTICABLE ONCE THEY HAVE BEEN BROUGHT TO SOUNDCLOUD'S ATTENTION, SOUNDCLOUD MAKES NO PROMISES, GUARANTEES, REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER (EXPRESS OR IMPLIED) REGARDING THE WEBSITE, THE APPS, THE SERVICES OR ANY PART OR PARTS THEREOF, ANY CONTENT, OR ANY LINKED SERVICES OR OTHER EXTERNAL SERVICES. SOUNDCLOUD DOES NOT WARRANT THAT YOUR USE OF THE PLATFORM WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE PLATFORM OR ANY PART OR PARTS THEREOF, THE CONTENT, OR THE SERVERS ON WHICH THE PLATFORM OPERATES ARE OR WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. SOUNDCLOUD DOES NOT WARRANT THAT ANY TRANSMISSION OF CONTENT UPLOADED TO THE PLATFORM WILL BE SECURE OR THAT ANY ELEMENTS OF THE PLATFORM DESIGNED TO PREVENT UNAUTHORIZED ACCESS, SHARING OR DOWNLOAD OF CONTENT WILL BE EFFECTIVE IN ANY AND ALL CASES, AND DOES NOT WARRANT THAT YOUR USE OF THE PLATFORM IS LAWFUL IN ANY PARTICULAR JURISDICTION.

SOUNDCLOUD AND ITS SUBSIDIARIES, AFFILIATES, SUCCESSORS, AND ASSIGNS, AND THEIR RESPECTIVE EMPLOYEES, AGENTS, DIRECTORS, OFFICERS AND SHAREHOLDERS, SPECIFICALLY DISCLAIM ALL OF THE FOREGOING WARRANTIES AND ANY OTHER WARRANTIES NOT EXPRESSLY SET OUT HEREIN TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING WITHOUT LIMITATION ANY EXPRESS OR IMPLIED WARRANTIES REGARDING NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

WHERE THE LAW OF ANY JURISDICTION LIMITS OR PROHIBITS THE DISCLAIMER OF IMPLIED OR OTHER WARRANTIES AS SET OUT ABOVE, THE ABOVE DISCLAIMERS SHALL NOT APPLY TO THE EXTENT THAT THE LAW OF SUCH JURISDICTION APPLIES TO THIS AGREEMENT.

Limitation of Liability

IN NO EVENT SHALL SOUNDCLOUD'S AGGREGATE LIABILITY TO YOU UNDER THIS AGREEMENT EXCEED THE GREATER OF 100 EURO OR THE AMOUNTS (IF ANY) PAID BY YOU TO SOUNDCLOUD DURING THE PREVIOUS TWELVE (12) MONTHS FOR THE SERVICES GIVING RISE TO THE CLAIM.

SOUNDCLOUD AND ITS SUBSIDIARIES, AFFILIATES, SUCCESSORS, AND ASSIGNS, AND THEIR RESPECTIVE EMPLOYEES, AGENTS, DIRECTORS, OFFICERS AND SHAREHOLDERS, SHALL HAVE NO LIABILITY FOR:

1. ANY LOSS OR DAMAGE ARISING FROM:

(A) YOUR INABILITY TO ACCESS OR USE THE PLATFORM OR ANY PART OR PARTS THEREOF, OR TO ACCESS ANY CONTENT OR ANY EXTERNAL SERVICES VIA THE PLATFORM;

(B) ANY CHANGES THAT SOUNDCLOUD MAY MAKE TO THE PLATFORM OR ANY PART THEREOF, OR ANY TEMPORARY OR PERMANENT SUSPENSION OR CESSATION OF ACCESS TO THE PLATFORM OR ANY CONTENT IN OR FROM ANY OR ALL TERRITORIES;

(C) ANY ACTION TAKEN AGAINST YOU BY THIRD PARTY RIGHTSHOLDERS WITH RESPECT TO ANY ALLEGED INFRINGEMENT OF SUCH THIRD PARTY'S RIGHTS RELATING TO YOUR CONTENT OR YOUR USE OF THE PLATFORM, OR ANY ACTION TAKEN AS PART OF AN INVESTIGATION BY SOUNDCLOUD OR ANY RELEVANT LAW ENFORCEMENT AUTHORITY REGARDING YOUR USE OF THE PLATFORM;

(D) ANY ERRORS OR OMISSIONS IN THE PLATFORM'S TECHNICAL OPERATION, OR FROM ANY INACCURACY OR DEFECT IN ANY CONTENT OR ANY INFORMATION RELATING TO CONTENT;

(E) YOUR FAILURE TO PROVIDE SOUNDCLOUD WITH ACCURATE OR COMPLETE INFORMATION, OR YOUR FAILURE TO KEEP YOUR USERNAME OR PASSWORD SUITABLY CONFIDENTIAL;

(F) ANY MISCONDUCT BY OTHER USERS OR THIRD PARTIES USING THE PLATFORM, ESPECIALLY IN BREACH OF THE AGREEMENT;

2. ANY LOSS OR DAMAGE TO ANY COMPUTER HARDWARE OR SOFTWARE, ANY LOSS OF DATA (INCLUDING YOUR CONTENT), OR ANY LOSS OR DAMAGE FROM ANY SECURITY BREACH; AND/OR

3. ANY LOSS OF PROFITS, OR ANY LOSS YOU SUFFER WHICH IS NOT A FORESEEABLE CONSEQUENCE OF SOUNDCLOUD BREACHING THESE TERMS OF USE. LOSSES ARE FORESEEABLE WHERE THEY COULD BE CONTEMPLATED BY YOU AND SOUNDCLOUD AT THE TIME YOU AGREE TO THESE TERMS OF USE, AND THEREFORE DO NOT INCLUDE ANY INDIRECT LOSSES, SUCH AS LOSS OF OPPORTUNITY.

ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO YOUR USE OF THE PLATFORM MUST BE NOTIFIED TO SOUNDCLOUD AS SOON AS POSSIBLE.

APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. IN SUCH CASES, YOU ACKNOWLEDGE AND AGREE THAT SUCH LIMITATIONS AND EXCLUSIONS REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN YOU AND SOUNDCLOUD AND ARE FUNDAMENTAL ELEMENTS OF THE BARGAIN BETWEEN YOU AND SOUNDCLOUD, AND THAT SOUNDCLOUD'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

NOTHING IN THESE TERMS OF USE LIMITS OR EXCLUDES THE LIABILITY OF SOUNDCLOUD, ITS SUBSIDIARIES, SUCCESSORS, ASSIGNS, OR THEIR RESPECTIVE EMPLOYEES, AGENTS, DIRECTORS, OFFICERS AND/OR SHAREHOLDERS: (I) FOR ANY DEATH OR PERSONAL INJURY CAUSED BY ITS OR THEIR NEGLIGENCE, (II) FOR ANY FORM OF FRAUD OR DECEIT, (III) FOR ANY DAMAGES CAUSED WILFULLY OR BY GROSS NEGLIGENCE, OR (IV) FOR ANY FORM OF LIABILITY WHICH CANNOT BE LIMITED OR EXCLUDED BY LAW.

Indemnification

You hereby agree to indemnify, defend and hold harmless SoundCloud, its successors, assigns, affiliates, agents, directors, officers, employees and shareholders from and against any and all claims, obligations, damages, losses, expenses, and costs, including reasonable attorneys' fees, resulting from:

(i) any violation by you of these Terms of Use or our Community Guidelines;

(ii) any third party claim of infringement of copyright or other intellectual property rights or invasion of privacy arising from the hosting of Your Content on the Platform, and/or your making available thereof to other users of the Platform, and/or the actual use of Your Content by other users of the Platform or Linked Services in accordance with these Terms of Use and the parameters set by you with respect to the distribution and sharing of Your Content;

(iii) any activity related to your account, be it by you or by any other person accessing your account with or without your consent unless such activity was caused by the act or default of SoundCloud.

Data protection, privacy and cookies

All personal data that you provide to us in connection with your use of the Platform is collected, stored, used, disclosed and otherwise processed by SoundCloud in accordance with our Privacy Policy. In addition, in common with most online services, we use cookies to help us understand how people are using the Platform, so that we can continue to improve the service we offer. Our use of cookies, and how to disable cookies, is explained in our Cookies Policy.

Meetups

SoundCloud has an active community of users, many of whom organize and attend face-to-face meetings at venues all over the world ("Meetups"). While SoundCloud is generally supportive of Meetups and may provide branded promotional materials to help organizers promote their Meetups, SoundCloud does not sponsor, oversee or in any way control such Meetups. You hereby acknowledge and agree that your attendance and participation in any Meetups is entirely at your own risk and SoundCloud does not bear any responsibility or liability for the actions of any SoundCloud users or any third parties who organize, attend or are otherwise involved in any Meetups.

Competitions and other promotions

From time to time, some SoundCloud® users may promote competitions, promotions, prize draws and other similar opportunities on the Platform ("Third Party Competitions"). SoundCloud is not the sponsor or promoter of these Third Party Competitions, and does not bear any responsibility or liability for the actions or inactions of any third parties who organize, administer or are otherwise involved in any promotion of these Third Party Competitions. If you wish to participate in any of these Third Party Competitions, it is your responsibility to read the terms and conditions applicable to the relevant Third Party Competition and to ensure that you understand the rules and any eligibility requirements, and are lawfully able to participate in such Third Party Competitions in your country of residence.

If you wish to run your own Third Party Competition on the Platform, you are free to do so provided you comply with our Competition Terms, which are available here.

Use of SoundCloud players and widget

The Platform includes access to customizable players ("Players"), and an embeddable version of the SoundCloud waveform player ("Widget") for incorporation into users' own sites, third party sites or social media profiles, whether or not a Linked Service. This functionality is provided to enable Uploaders to put their Content wherever they wish, and to enable other users of the Platform to share and distribute Content within the parameters set by the Uploader.

You may not, without the prior written consent of SoundCloud, use the Players or the Widget in such a way that you aggregate Content from the Platform into a separate destination that replicates substantially the offering of the Website, or comprises a content service of which Content from the Platform forms a material part. Similarly, you may not, without the prior written consent of SoundCloud, use the Players or the Widget to embed Content into any website or other destination dedicated to a particular artist (except where the relevant Content is Your Content and you are the person or are authorized to represent the person to whom the site or destination is dedicated), or to a particular genre. You may not use the Players or Widget in any

way that suggests that SoundCloud or any artist, audio creator or other third party endorses or supports your website, or your use of the Players or Widget. The foregoing shall apply whether such use is commercial or non-commercial.

SoundCloud reserves the right to block your use of the Players and the Widget at any time and for any reason in its sole discretion.

Subscriptions and gift codes

Certain features of the Platform are only available to registered users who subscribe to a "Pro" or "Pro Unlimited" plan (together, "Pro Accounts") or to SoundCloud Go (Pro Accounts and SoundCloud Go are each referred to as a "Subscrpition").

The purchase of Pro Accounts and gift codes related to Pro Accounts is subject to additional terms, which you will find here. In addition, the purchase of subscriptions for SoundCloud Go is subject to additional terms, which you will find here.

The Pro Account Terms and the SoundCloud Go Terms include, amongst other things, terms relating to payment, the conclusion, renewal and cancellation of your Subscription, including your right of cancellation during the first 14 days of your Subscription, and certain technical usage limitations.

The Pro Account Terms are applicable to Pro and Pro Unlimited Account users and the SoundCloud Go Terms are applicable to SoundCloud Go users in addition to these general Terms of Use when they purchase a Subscription. SoundCloud reserves the right to limit the availability of SoundCloud Go subscriptions to specific jurisdictions as may be determined by SoundCloud in its sole discretion from time to time.

Changes to the Platform, accounts and pricing

SoundCloud reserves the right at any time and for any reason to suspend, discontinue, terminate or cease providing access to the Platform or any part thereof, temporarily or permanently, and whether in its entirety or with respect to individual territories only. In the case of any temporary or permanent suspension, discontinuation, termination or cessation of access, SoundCloud shall use its reasonable endeavors to notify registered users of such decision in advance.

You hereby agree that SoundCloud and its subsidiaries, affiliates, successors, assigns, employees, agents, directors, officers and shareholders shall not be liable to you or to any third party for any changes or modifications to the Website, Apps and/or any Services that SoundCloud may wish to make from time to time, or for any decision to suspend, discontinue or terminate the Website, the Services or any part or parts thereof, or your possibility to use or access the same from or within any territory or territories.

SoundCloud may change the features of any type of account, may withdraw or, or introduce new features, products or types of account at any time and for any reason, and may change the prices charged for any of its Subscriptions from time to time. In the event of any increase in the price or material reduction in the features of any Subscription which you have purchased, such change(s) will be communicated to you and will only take effect with respect to any subsequent renewal of

your subscription. In all other cases, where SoundCloud proposes to make changes to any type of Subscription you have purchased, and these changes are material and to your disadvantage, SoundCloud will notify you of the proposed changes by sending a message to your SoundCloud® account and/or an email to the then current email address that we have for your account, at least six (6) weeks in advance. You will have no obligation to continue using the Platform following any such notification, but if you do not terminate your account as described in the Termination section below during such six (6) week period, your continued use of your account after the end of that six (6) week period will constitute your acceptance of the changes to your Subscription.

Termination

You may terminate this Agreement at any time by sending notice in writing to SoundCloud at Rheinsberger Str. 76/77, 10115 Berlin, Germany confirming such termination, by removing all of Your Content from your account, or by deleting your account and thereafter by ceasing to use the Platform. If you have a Subscription, and terminate this Agreement before the end of such Subscription, we are unable to offer any refund for any unexpired period of your Subscription.

SoundCloud may suspend your access to the Platform and/or terminate this Agreement at any time if (i) you are deemed to be a Repeat Infringer as described above; (ii) you are in breach of any of the material provision of these Terms of Use or our Community Guidelines, including without limitation, the provisions of the following sections: Your Use of the Platform, Your Content, Grant of Licence , and Your Representations and Warranties; (iii) SoundCloud elects at its discretion to cease providing access to the Platform in the jurisdiction where you reside or from where you are attempting to access the Platform, or (iv) in other reasonable circumstances as determined by SoundCloud at its discretion. If you have a Subscription and your account is suspended or terminated by SoundCloud pursuant to (i) or (ii) above, you will not be entitled to any refund for any unexpired period of your subscription. If your account is terminated pursuant to (iii) or (iv), refunds may be payable at the reasonable discretion of SoundCloud.

Once your account has been terminated, any and all Content residing in your account, or pertaining to activity from your account (for example, data relating to the distribution or consumption of your sounds), will be irretrievably deleted by SoundCloud, except to the extent that we are obliged or permitted to retain such content, data or information for a certain period of time in accordance with applicable laws and regulations and/or to protect our legitimate business interests. You are advised to save or back up any material that you have uploaded to your account before terminating your account, as SoundCloud assumes no liability for any material that is irretrievably deleted following any termination of your account. SoundCloud is not able to provide you with any .csv or other similar file of data relating to activity associated with your account, whether before or after termination or cancellation. This data is provided and is accessible only for viewing via your account page on the Website for as long as your account is active.

If you access the Platform via any of our Apps or via any third party app connected to your account, deleting that app will not delete your account. If you wish to delete your account, you will need to do so from the Account page within your Settings on the Website. The provisions of these Terms of Use that are intended by their nature to survive the termination or cancellation of

this Agreement will survive the termination of this Agreement, including, but not limited to, those Sections entitled Your SoundCloud Account, Your Content, Grant of License , Representations and Warranties, Liability for Content, Disclaimer, Limitation of Liability, Indemnification, Termination and Right of Cancellation, Assignment to Third Parties, Severability, Entire Agreement, and Applicable Law and Jurisdiction, respectively.

Assignment to third parties

SoundCloud may assign its rights and (where permissible by law) its obligations under this Agreement, in whole or in part, to any third party at any time without notice, including without limitation, to any person or entity acquiring all or substantially all of the assets or business of SoundCloud. You may not assign this Agreement or the rights and duties hereunder, in whole or in part, to any third party without the prior written consent of SoundCloud.

Severability

Should one or more provisions of these Terms of Use be found to be unlawful, void or unenforceable, such provision(s) shall be deemed severable and will not affect the validity and/or enforceability of the remaining provisions of the Terms of Use, which will remain in full force and effect.

Entire agreement

These Terms of Use, together with the Community Guidelines, constitute the entire agreement between you and SoundCloud with respect to your use of the Platform (other than any use of SoundCloud's APIs which may also be subject to separate [API Terms of Use]), and supersede any prior agreement between you and SoundCloud. Any modifications to this Agreement must be made in writing.

Third party rights

These Terms of Use are not intended to give rights to anyone except you and SoundCloud. This does not affect our right to transfer our rights or obligations to a third party as described in the Assignment to Third Parties section.

Applicable law and jurisdiction

Except where otherwise required by the mandatory law of the United States or any member state of the European Union

(i) this Agreement is subject to the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG) and excluding the principles of conflict of laws (international private law); and

(ii) you hereby agree, and SoundCloud agrees, to submit to the exclusive jurisdiction of the courts in Berlin, Germany for resolution of any dispute, action or proceeding arising in connection with this Agreement.

The foregoing provisions of this Applicable Law and Jurisdiction section do not apply to any claim in which SoundCloud seeks equitable relief of any kind. You acknowledge that, in the event of a breach of this Agreement by SoundCloud or any third party, the damage or harm, if any, caused to you will not entitle you to seek injunctive or other equitable relief against SoundCloud, including with respect to Your Content, and your only remedy shall be for monetary damages, subject to the limitations of liability set forth in these Terms of Use.

Disclosures

The services hereunder are offered by SoundCloud Limited, a company incorporated under the laws of England & Wales and with its main place of business at Rheinsberger Str. 76/77, 10115 Berlin, Germany. More information about SoundCloud is available here. You may contact us by sending correspondence to the foregoing address or by emailing us at contact@soundcloud.com. If you are a resident of the State of California, you may have these Terms of Use mailed to you electronically by sending a letter to the foregoing address with your electronic mail address and a request for these Terms of Use.

Last Amended: 25 May 2018

TikTok
https://www.tiktok.com/legal/terms-of-use?lang=en#terms-us

Last updated: February 2019

1. Your Relationship With Us

Welcome to TikTok (the "Platform"), which is provided by TikTok Inc. in the United States (collectively such entities will be referred to as "TikTok", "we" or "us").

You are reading the terms of service (the "Terms"), which govern the relationship and serve as an agreement between you and us and set forth the terms and conditions by which you may access and use the Platform and our related websites, services, applications, products and content (collectively, the "Services"). Access to certain Services or features of the Services (such as, by way of example and not limitation, the ability to submit or share User Content (defined below)) may be subject to age restrictions and not available to all users of the Services. Our Services are provided for private, non-commercial use. For purposes of these Terms, "you" and "your" means you as the user of the Services.

The Terms form a legally binding agreement between you and us. Please take the time to read them carefully. If you are under age 18, you may only use the Services with the consent of your parent or legal guardian. Please be sure your parent or legal guardian has reviewed and discussed these Terms with you.

ARBITRATION NOTICE FOR USERS IN THE UNITED STATES: THESE TERMS CONTAIN AN ARBITRATION CLAUSE AND A WAIVER OF RIGHTS TO BRING A CLASS ACTION AGAINST US. EXCEPT FOR CERTAIN TYPES OF DISPUTES MENTIONED IN THAT ARBITRATION CLAUSE, YOU AND TIKTOK AGREE THAT DISPUTES BETWEEN US WILL BE RESOLVED BY MANDATORY BINDING ARBITRATION, AND YOU AND TIKTOK WAIVE ANY RIGHT TO PARTICIPATE IN A CLASS-ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.

2. Accepting the Terms

By accessing or using our Services, you confirm that you can form a binding contract with TikTok, that you accept these Terms and that you agree to comply with them. Your access to and use of our Services is also subject to our Privacy

Policy and Community Policy, the terms of which can be found directly on the Platform, or where the Platform is made available for download, on your mobile device's applicable app store, and are incorporated herein by reference. By using the Services, you consent to the terms of the Privacy Policy.

If you are accessing or using the Services on behalf of a business or entity, then (a) "you" and "your" includes you and that business or entity, (b) you represent and warrant that you are an authorized representative of the business or entity with the authority to bind the entity to these Terms, and that you agree to these Terms on the entity's behalf, and (c) your business or entity is legally and financially responsible for your access or use of the Services as well as for the access or use of your account by others affiliated with your entity, including any employees, agents or contractors.

You can accept the Terms by accessing or using our Services. You understand and agree that we will treat your access or use of the Services as acceptance of the Terms from that point onwards.

You should print off or save a local copy of the Terms for your records.

3. Changes to the Terms

We amend these Terms from time to time, for instance when we update the functionality of our Services, when we combine multiple apps or services operated by us or our affiliates into a single combined service or app, or when there are regulatory changes. We will use commercially reasonable efforts to generally notify all users of any material changes to these Terms, such as through a notice on our Platform, however, you should look at the Terms regularly to check for such changes. We will also update the "Last Updated" date at the top of these Terms, which reflect the effective date of such Terms. Your continued access or use of the Services after the date of the new Terms constitutes your acceptance of the new Terms. If you do not agree to the new Terms, you must stop accessing or using the Services.

4. Your Account with Us

To access or use some of our Services, you must create an account with us. When you create this account, you must provide accurate and up-to-date information. It is important that you maintain and promptly update your details and any other information you provide to us, to keep such information current and complete.

It is important that you keep your account password confidential and that you do not disclose it to any third party. If you know or suspect that any third party knows your password or has accessed your account, you must promptly notify us at feedback@tiktok.com.

You agree that you are solely responsible (to us and to others) for the activity that occurs under your account.

We reserve the right to disable your user account at any time, including if you have failed to comply with any of the provisions of these Terms, or if activities occur on your account which, in our sole discretion, would or might cause damage to or impair the Services or infringe or violate any third party rights, or violate any applicable laws or regulations.

If you no longer want to use our Services again, and would like your account deleted, we can take care of this for you. Please contact us via feedback@tiktok.com, and we will provide you with further assistance and guide you through the process. Once you choose to delete your account, you will not be able to reactivate your account or retrieve any of the content or information you have added.

5. Your Access to and Use of Our Services

Your access to and use of the Services is subject to these Terms and all applicable laws and regulations. You may not:

- access or use the Services if you are not fully able and legally competent to agree to these Terms or are authorized to use the Services by your parent or legal guardian;
- make unauthorised copies, modify, adapt, translate, reverse engineer, disassemble, decompile or create any derivative works of the Services or any content included therein, including any files, tables or documentation (or any portion thereof) or determine or attempt to determine any source code, algorithms, methods or techniques embodied by the Services or any derivative works thereof;
- distribute, license, transfer, or sell, in whole or in part, any of the Services or any derivative works thereof
- market, rent or lease the Services for a fee or charge, or use the Services to advertise or perform any commercial solicitation;

- use the Services, without our express written consent, for any commercial or unauthorized purpose, including communicating or facilitating any commercial advertisement or solicitation or spamming;
- interfere with or attempt to interfere with the proper working of the Services, disrupt our website or any networks connected to the Services, or bypass any measures we may use to prevent or restrict access to the Services;
- incorporate the Services or any portion thereof into any other program or product. In such case, we reserve the right to refuse service, terminate accounts or limit access to the Services in our sole discretion;
- use automated scripts to collect information from or otherwise interact with the Services;
- impersonate any person or entity, or falsely state or otherwise misrepresent you or your affiliation with any person or entity, including giving the impression that any content you upload, post, transmit, distribute or otherwise make available emanates from the Services;
- intimidate or harass another, or promote sexually explicit material, violence or discrimination based on race, sex, religion, nationality, disability, sexual orientation or age;
- use or attempt to use another's account, service or system without authorisation from TikTok, or create a false identity on the Services;
- use the Services in a manner that may create a conflict of interest or undermine the purposes of the Services, such as trading reviews with other users or writing or soliciting fake reviews;
- use the Services to upload, transmit, distribute, store or otherwise make available in any way: files that contain viruses, trojans, worms, logic bombs or other material that is malicious or technologically harmful;
- any unsolicited or unauthorised advertising, solicitations, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other prohibited form of solicitation;
- any private information of any third party, including addresses, phone numbers, email addresses, number and feature in the personal identity

document (e.g., National Insurance numbers, passport numbers) or credit card numbers;

- any material which does or may infringe any copyright, trademark or other intellectual property or privacy rights of any other person;
- any material which is defamatory of any person, obscene, offensive, pornographic, hateful or inflammatory;
- any material that would constitute, encourage or provide instructions for a criminal offence, dangerous activities or self-harm;
- any material that is deliberately designed to provoke or antagonise people, especially trolling and bullying, or is intended to harass, harm, hurt, scare, distress, embarrass or upset people;
- any material that contains a threat of any kind, including threats of physical violence;
- any material that is racist or discriminatory, including discrimination on the basis of someone's race, religion, age, gender, disability or sexuality;
- any answers, responses, comments, opinions, analysis or recommendations that you are not properly licensed or otherwise qualified to provide; or
- material that, in the sole judgment of TikTok, is objectionable or which restricts or inhibits any other person from using the Services, or which may expose TikTok, the Services or its users to any harm or liability of any type.

In addition to the above, your access to and use of the Services must, at all times, be compliant with our Community Policy.

We reserve the right, at any time and without prior notice, to remove or disable access to content at our discretion for any reason or no reason. Some of the reasons we may remove or disable access to content may include finding the content objectionable, in violation of these Terms or our Community Policy, or otherwise harmful to the Services or our users. Our automated systems analyze your content (including emails) to provide you personally relevant product features, such as customized search results, tailored advertising, and spam and malware detection. This analysis occurs as the content is sent, received, and when it is stored.

6. Intellectual Property Rights

We respect intellectual property rights and ask you to do the same. As a condition of your access to and use of the Services, you agree to the terms of the Copyright Policy.

7. Content

TikTok Content

As between you and TikTok, all content, software, images, text, graphics, illustrations, logos, patents, trademarks, service marks, copyrights, photographs, audio, videos, music on and "look and feel" of the Services, and all intellectual property rights related thereto (the "TikTok Content"), are either owned or licensed by TikTok, it being understood that you or your licensors will own any User Content (as defined below) you upload or transmit through the Services. Use of the TikTok Content or materials on the Services for any purpose not expressly permitted by these Terms is strictly prohibited. Such content may not be downloaded, copied, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed or otherwise exploited for any purpose whatsoever without our or, where applicable, our licensors' prior written consent. We and our licensors reserve all rights not expressly granted in and to their content.

You acknowledge and agree that we may generate revenues, increase goodwill or otherwise increase our value from your use of the Services, including, by way of example and not limitation, through the sale of advertising, sponsorships, promotions, usage data and Gifts (defined below), and except as specifically permitted by us in these Terms or in another agreement you enter into with us, you will have no right to share in any such revenue, goodwill or value whatsoever. You further acknowledge that, except as specifically permitted by us in these Terms or in another agreement you enter into with us, you (i) have no right to receive any income or other consideration from any User Content (defined below) or your use of any musical works, sound recordings or audiovisual clips made available to you on or through the Services, including in any User Content created by you, and (ii) are prohibited from exercising any rights to monetize or obtain consideration from any User Content within the Services or on any third party service (e.g. , you cannot claim User Content that has been uploaded to a social media platform such as YouTube for monetization).

Subject to the terms and conditions of the Terms, you are hereby granted a non-exclusive, limited, non-transferable, non-sublicensable, revocable, worldwide license to access and use the Services, including to download the Platform on a permitted device, and to access the TIkTok Content solely for your personal, non-

commercial use through your use of the Services and solely in compliance with these Terms. TikTok reserves all rights not expressly granted herein in the Services and the TikTok Content. You acknowledge and agree that TikTok may terminate this license at any time for any reason or no reason.

NO RIGHTS ARE LICENSED WITH RESPECT TO SOUND RECORDINGS AND THE MUSICAL WORKS EMBODIED THEREIN THAT ARE MADE AVAILABLE FROM OR THROUGH THE SERVICE.

You acknowledge and agree that when you view content provided by others on the Services, you are doing so at your own risk. The content on our Services is provided for general information only. It is not intended to amount to advice on which you should rely. You must obtain professional or specialist advice before taking, or refraining from, any action on the basis of the content on our Services.

We make no representations, warranties or guarantees, whether express or implied, that any TikTok Content (including User Content) is accurate, complete or up to date. Where our Services contain links to other sites and resources provided by third parties, these links are provided for your information only. We have no control over the contents of those sites or resources. Such links should not be interpreted as approval by us of those linked websites or information you may obtain from them. You acknowledge that we have no obligation to pre-screen, monitor, review, or edit any content posted by you and other users on the Services (including User Content).

User-Generated Content

Users of the Services may be permitted to upload, post or transmit (such as via a stream) or otherwise make available content through the Services including, without limitation, any text, photographs, user videos, sound recordings and the musical works embodied therein, including videos that incorporate locally stored sound recordings from your personal music library and ambient noise ("User Content"). Users of the Services may also extract all or any portion of User Content created by another user to produce additional User Content, including collaborative User Content with other users, that combine and intersperse User Content generated by more than one user. Users of the Services may also overlay music, graphics, stickers, Virtual Items (as defined and further explained Virtual Items Policy) and other elements provided by TikTok ("TikTok Elements") onto this User Content and transmit this User Content through the Services. The information and materials in the User Content, including User Content that includes TikTok Elements, have not been verified or approved by us. The views

expressed by other users on the Services (including through use of the virtual gifts) do not represent our views or values.

Whenever you access or use a feature that allows you to upload or transmit User Content through the Services (including via certain third party social media platforms such as Instagram, Facebook, YouTube, Twitter), or to make contact with other users of the Services, you must comply with the standards set out at "Your Access to and Use of Our Services" above. You may also choose to upload or transmit your User Content, including User Content that includes TikTok Elements, on sites or platforms hosted by third parties. If you decide to do this, you must comply with their content guidelines as well as with the standards set out at "Your Access to and Use of Our Services" above. As noted above, these features may not be available to all users of the Services, and we have no liability to you for limiting your right to certain features of the Services.

You warrant that any such contribution does comply with those standards, and you will be liable to us and indemnify us for any breach of that warranty. This means you will be responsible for any loss or damage we suffer as a result of your breach of warranty.

Any User Content will be considered non-confidential and non-proprietary. You must not post any User Content on or through the Services or transmit to us any User Content that you consider to be confidential or proprietary. When you submit User Content through the Services, you agree and represent that you own that User Content, or you have received all necessary permissions, clearances from, or are authorised by, the owner of any part of the content to submit it to the Services, to transmit it from the Services to other third party platforms, and/or adopt any third party content.

If you only own the rights in and to a sound recording, but not to the underlying musical works embodied in such sound recordings, then you must not post such sound recordings to the Services unless you have all permissions, clearances from, or are authorised by, the owner of any part of the content to submit it to the Services

You or the owner of your User Content still own the copyright in User Content sent to us, but by submitting User Content via the Services, you hereby grant us an unconditional irrevocable, non-exclusive, royalty-free, fully transferable, perpetual worldwide licence to use, modify, adapt, reproduce, make derivative works of, publish and/or transmit, and/or distribute and to authorise other users of the Services and other third-parties to view, access, use, download, modify, adapt,

reproduce, make derivative works of, publish and/or transmit your User Content in any format and on any platform, either now known or hereinafter invented.

You further grant us a royalty-free license to use your user name, image, voice, and likeness to identify you as the source of any of your User Content; provided, however, that your ability to provide an image, voice, and likeness may be subject to limitations due to age restrictions.

For the avoidance of doubt, the rights granted in the preceding paragraphs of this Section include, but are not limited to, the right to reproduce sound recordings (and make mechanical reproductions of the musical works embodied in such sound recordings), and publicly perform and communicate to the public sound recordings (and the musical works embodied therein), all on a royalty-free basis. This means that you are granting us the right to use your User Content without the obligation to pay royalties to any third party, including, but not limited to, a sound recording copyright owner (e.g., a record label), a musical work copyright owner (e.g., a music publisher), a performing rights organization (e.g., ASCAP, BMI, SESAC, etc.) (a "PRO"), a sound recording PRO (e.g., SoundExchange), any unions or guilds, and engineers, producers or other royalty participants involved in the creation of User Content.

Specific Rules for Musical Works and for Recording Artists. If you are a composer or author of a musical work and are affiliated with a PRO, then you must notify your PRO of the royalty-free license you grant through these Terms in your User Content to us. You are solely responsible for ensuring your compliance with the relevant PRO's reporting obligations. If you have assigned your rights to a music publisher, then you must obtain the consent of such music publisher to grant the royalty-free license(s) set forth in these Terms in your User Content or have such music publisher enter into these Terms with us. Just because you authored a musical work (e.g., wrote a song) does not mean you have the right to grant us the licenses in these Terms. If you are a recording artist under contract with a record label, then you are solely responsible for ensuring that your use of the Services is in compliance with any contractual obligations you may have to your record label, including if you create any new recordings through the Services that may be claimed by your label.

Through-To-The-Audience Rights. All of the rights you grant in your User Content in these Terms are provided on a through-to-the-audience basis, meaning the owners or operators of third party services will not have any separate liability to you or any other third party for User Content posted or used on such third party service via the Services.

Waiver of Rights to User Content. By posting User Content to or through the Services, you waive any rights to prior inspection or approval of any marketing or promotional materials related to such User Content. You also waive any and all rights of privacy, publicity, or any other rights of a similar nature in connection with your User Content, or any portion thereof. To the extent any moral rights are not transferable or assignable, you hereby waive and agree never to assert any and all moral rights, or to support, maintain or permit any action based on any moral rights that you may have in or with respect to any User Content you Post to or through the Services.

We also have the right to disclose your identity to any third party who is claiming that any User Content posted or uploaded by you to our Services constitutes a violation of their intellectual property rights, or of their right to privacy.

We, or authorised third parties, reserve the right to cut, crop, edit or refuse to publish, your content at our or their sole discretion. We have the right to remove, disallow, block or delete any posting you make on our Services if, in our opinion, your post does not comply with the content standards set out at "Your Access to and Use of Our Services"above. In addition, we have the right – but not the obligation – in our sole discretion to remove, disallow, block or delete any User Content (i) that we consider to violate these Terms, or (ii) in response to complaints from other users or third parties, with or without notice and without any liability to you. As a result, we recommend that you save copies of any User Content that you post to the Services on your personal device(s) in the event that you want to ensure that you have permanent access to copies of such User Content. We do not guarantee the accuracy, integrity, appropriateness or quality of any User Content, and under no circumstances will we be liable in any way for any User Content.

You control whether your User Content is made publicly available on the Services to all other users of the Services or only available to people you approve. To restrict access to your User Content, you should select the privacy setting available within the Platform.

We accept no liability in respect of any content submitted by users and published by us or by authorised third parties.

If you wish to complain about information and materials uploaded by other users please contact us at: feedback@tiktok.com.

TikTok takes reasonable measures to expeditiously remove from our Services any infringing material that we become aware of.It is TikTok's policy, in appropriate circumstances and at its discretion, to disable or terminate the accounts of users of the Services who repeatedly infringe copyrights or intellectual property rights of others.

While our own staff is continually working to develop and evaluate our own product ideas and features, we pride ourselves on paying close attention to the interests, feedback, comments, and suggestions we receive from the user community. If you choose to contribute by sending us or our employees any ideas for products, services, features, modifications, enhancements, content, refinements, technologies, content offerings (such as audio, visual, games, or other types of content), promotions, strategies, or product/feature names, or any related documentation, artwork, computer code, diagrams, or other materials (collectively "Feedback"), then regardless of what your accompanying communication may say, the following terms will apply, so that future misunderstandings can be avoided. Accordingly, by sending Feedback to us, you agree that:

TikTok has no obligation to review, consider, or implement your Feedback, or to return to you all or part of any Feedback for any reason;

Feedback is provided on a non-confidential basis, and we are not under any obligation to keep any Feedback you send confidential or to refrain from using or disclosing it in any way; and

You irrevocably grant us perpetual and unlimited permission to reproduce, distribute, create derivative works of, modify, publicly perform (including on a through-to-the-audience basis), communicate to the public, make available, publicly display, and otherwise use and exploit the Feedback and derivatives thereof for any purpose and without restriction, free of charge and without attribution of any kind, including by making, using, selling, offering for sale, importing, and promoting commercial products and services that incorporate or embody Feedback, whether in whole or in part, and whether as provided or as modified.

8. Indemnity

You agree to defend, indemnify, and hold harmless TikTok, its parents, subsidiaries, and affiliates, and each of their respective officers, directors, employees, agents and advisors from any and all claims, liabilities, costs, and expenses, including, but not limited to, attorneys' fees and expenses, arising out of

a breach by you or any user of your account of these Terms or arising out of a breach of your obligations, representation and warranties under these Terms.

9. EXCLUSION OF WARRANTIES

NOTHING IN THESE TERMS SHALL AFFECT ANY STATUTORY RIGHTS THAT YOU CANNOT CONTRACTUALLY AGREE TO ALTER OR WAIVE AND ARE LEGALLY ALWAYS ENTITLED TO AS A CONSUMER.

THE SERVICES ARE PROVIDED "AS IS" AND WE MAKE NO WARRANTY OR REPRESENTATION TO YOU WITH RESPECT TO THEM. IN PARTICULAR WE DO NOT REPRESENT OR WARRANT TO YOU THAT:

- YOUR USE OF THE SERVICES WILL MEET YOUR REQUIREMENTS;
- YOUR USE OF THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR;
- ANY INFORMATION OBTAINED BY YOU AS A RESULT OF YOUR USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE; AND
- DEFECTS IN THE OPERATION OR FUNCTIONALITY OF ANY SOFTWARE PROVIDED TO YOU AS PART OF THE SERVICES WILL BE CORRECTED.

NO CONDITIONS, WARRANTIES OR OTHER TERMS (INCLUDING ANY IMPLIED TERMS AS TO SATISFACTORY QUALITY, FITNESS FOR PURPOSE OR CONFORMANCE WITH DESCRIPTION) APPLY TO THE SERVICES EXCEPT TO THE EXTENT THAT THEY ARE EXPRESSLY SET OUT IN THE TERMS. WE MAY CHANGE, SUSPEND, WITHDRAW OR RESTRICT THE AVAILABILITY OF ALL OR ANY PART OF OUR PLATFORM FOR BUSINESS AND OPERATIONAL REASONS AT ANY TIME WITHOUT NOTICE

10. LIMITATION OF LIABILITY

NOTHING IN THESE TERMS SHALL EXCLUDE OR LIMIT OUR LIABILITY FOR LOSSES WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. THIS INCLUDES LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY OUR NEGLIGENCE OR THE NEGLIGENCE OF OUR EMPLOYEES, AGENTS OR SUBCONTRACTORS AND FOR FRAUD OR FRAUDULENT MISREPRESENTATION.

SUBJECT TO THE PARAGRAPH ABOVE, WE SHALL NOT BE LIABLE TO YOU FOR:

- (I) ANY LOSS OF PROFIT (WHETHER INCURRED DIRECTLY OR INDIRECTLY);
- (II) ANY LOSS OF GOODWILL;
- (III) ANY LOSS OF OPPORTUNITY;
- (IV) ANY LOSS OF DATA SUFFERED BY YOU; OR
- (V) ANY INDIRECT OR CONSEQUENTIAL LOSSES WHICH MAY BE INCURRED BY YOU. ANY OTHER LOSS WILL BE LIMITED TO THE AMOUNT PAID BY YOU TO TIKTOK WITHIN THE LAST 12 MONTHS.

ANY LOSS OR DAMAGE WHICH MAY BE INCURRED BY YOU AS A RESULT OF:

- ANY RELIANCE PLACED BY YOU ON THE COMPLETENESS, ACCURACY OR EXISTENCE OF ANY ADVERTISING, OR AS A RESULT OF ANY RELATIONSHIP OR TRANSACTION BETWEEN YOU AND ANY ADVERTISER OR SPONSOR WHOSE ADVERTISING APPEARS ON THE SERVICE;
- ANY CHANGES WHICH WE MAY MAKE TO THE SERVICES, OR FOR ANY PERMANENT OR TEMPORARY CESSATION IN THE PROVISION OF THE SERVICES (OR ANY FEATURES WITHIN THE SERVICES);
- THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE, ANY CONTENT AND OTHER COMMUNICATIONS DATA MAINTAINED OR TRANSMITTED BY OR THROUGH YOUR USE OF THE SERVICES;
- YOUR FAILURE TO PROVIDE US WITH ACCURATE ACCOUNT INFORMATION; OR
- YOUR FAILURE TO KEEP YOUR PASSWORD OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL.

PLEASE NOTE THAT WE ONLY PROVIDE OUR PLATFORM FOR DOMESTIC AND PRIVATE USE. YOU AGREE NOT TO USE OUR PLATFORM FOR ANY COMMERCIAL OR BUSINESS PURPOSES, AND WE HAVE NO LIABILITY TO YOU FOR ANY LOSS OF PROFIT, LOSS OF BUSINESS, LOSS OF GOODWILL OR BUSINESS REPUTATION, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS OPPORTUNITY.

IF DEFECTIVE DIGITAL CONTENT THAT WE HAVE SUPPLIED DAMAGES A DEVICE OR DIGITAL CONTENT BELONGING TO YOU AND THIS IS CAUSED BY OUR FAILURE TO USE REASONABLE CARE AND SKILL, WE WILL EITHER REPAIR THE DAMAGE OR PAY YOU COMPENSATION. HOWEVER, WE WILL NOT BE LIABLE FOR DAMAGE THAT YOU COULD HAVE AVOIDED BY FOLLOWING OUR ADVICE TO APPLY AN UPDATE OFFERED TO YOU FREE OF CHARGE OR FOR DAMAGE THAT WAS CAUSED BY YOU FAILING TO CORRECTLY FOLLOW INSTALLATION INSTRUCTIONS OR TO HAVE IN PLACE THE MINIMUM SYSTEM REQUIREMENTS ADVISED BY US.

THESE LIMITATIONS ON OUR LIABILITY TO YOU SHALL APPLY WHETHER OR NOT WE HAVE BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING.

YOU ARE RESPONSIBLE FOR ANY MOBILE CHARGES THAT MAY APPLY TO YOUR USE OF OUR SERVICE, INCLUDING TEXT-MESSAGING AND DATA CHARGES. IF YOU'RE UNSURE WHAT THOSE CHARGES MAY BE, YOU SHOULD ASK YOUR SERVICE PROVIDER BEFORE USING THE SERVICE.

TO THE FULLEST EXTENT PERMITTED BY LAW, ANY DISPUTE YOU HAVE WITH ANY THIRD PARTY ARISING OUT OF YOUR USE OF THE SERVICES, INCLUDING, BY WAY OF EXAMPLE AND NOT LIMITATION, ANY CARRIER, COPYRIGHT OWNER OR OTHER USER, IS DIRECTLY BETWEEN YOU AND SUCH THIRD PARTY, AND YOU IRREVOCABLY RELEASE US AND OUR AFFILIATES FROM ANY AND ALL CLAIMS, DEMANDS AND DAMAGES (ACTUAL AND CONSEQUENTIAL) OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES.

11. Other Terms

Open Source. The Platform contains certain open source software. Each item of open source software is subject to its own applicable license terms, which can be found at Open Source Policy.

Entire Agreement. These Terms constitute the whole legal agreement between you and TikTok and govern your use of the Services and completely replace any prior agreements between you and TikTok in relation to the Services.

Links. You may link to our home page, provided you do so in a way that is fair and legal and does not damage our reputation or take advantage of it. You must not establish a link in such a way as to suggest any form of association, approval or endorsement on our part where none exists. You must not establish a link to our Services in any website that is not owned by you. The website in which you are linking must comply in all respects with the content standards set out at "Your Access to and Use of Our Services" above. We reserve the right to withdraw linking permission without notice.

No Waiver. Our failure to insist upon or enforce any provision of these Terms shall not be construed as a waiver of any provision or right.

Security. We do not guarantee that our Services will be secure or free from bugs or viruses. You are responsible for configuring your information technology, computer programmes and platform to access our Services. You should use your own virus protection software.

Severability. If any court of law, having jurisdiction to decide on this matter, rules that any provision of these Terms is invalid, then that provision will be removed from the Terms without affecting the rest of the Terms, and the remaining provisions of the Terms will continue to be valid and enforceable.

ARBITRATION AND CLASS ACTION WAIVER. This Section includes an arbitration agreement and an agreement that all claims will be brought only in an individual capacity (and not as a class action or other representative proceeding). Please read it carefully. You may opt out of the arbitration agreement by following the opt out procedure described below.

Informal Process First. You agree that in the event of any dispute between you and TikTok, you will first contact TikTok and make a good faith sustained effort to resolve the dispute before resorting to more formal means of resolution, including without limitation any court action.

Arbitration Agreement. After the informal dispute resolution process any remaining dispute, controversy, or claim (collectively, "Claim") relating in any way to your use of TikTok's services and/or products, including the Services, or relating in any way to the communications between you and TikTok or any other user of the Services, will be finally resolved by binding arbitration. This mandatory arbitration agreement applies equally to you and TikTok. However, this arbitration agreement does not (a) govern any Claim by TikTok for infringement of its intellectual property or access to the Services that is unauthorized or exceeds authorization granted in these Terms or (b) bar you from making use of applicable small claims court procedures in appropriate cases. If you are an individual you may opt out of this arbitration agreement within thirty (30) days of the first of the date you access or use this Services by following the procedure described below.

You agree that the U.S. Federal Arbitration Act governs the interpretation and enforcement of this provision, and that you and TikTok are each waiving the right to a trial by jury or to participate in a class action. This arbitration provision will survive any termination of these Terms.

If you wish to begin an arbitration proceeding, after following the informal dispute resolution procedure, you must send a letter requesting arbitration and describing your claim to:

TikTok Inc. 10010 Venice Blvd., Suite 301, Culver City, CA 90232

Email Address: legal@tiktok.com

The arbitration will be administered by the American Arbitration Association (AAA) under its rules including, if you are an individual, the AAA's Supplementary Procedures for Consumer-Related Disputes. If you are not an individual or have used the Services on behalf of an entity, the AAA's Supplementary Procedures for Consumer-Related Disputes will not be used. The AAA's rules are available at www.adr.org or by calling 1-800-778-7879.

Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules. If you are an individual and have not accessed or used the Services on behalf of an entity, we will reimburse those fees for claims where the amount in dispute is less than $10,000, unless the arbitrator determines the claims are frivolous, and we will not seek attorneys' fees and costs in arbitration unless the arbitrator determines the claims are frivolous.

The arbitrator, and not any federal, state, or local court, will have exclusive authority to resolve any dispute relating to the interpretation, applicability,

unconscionability, arbitrability, enforceability, or formation of this arbitration agreement, including any claim that all or any part of this arbitration agreement is void or voidable. However, the preceding sentence will not apply to the "Class Action Waiver" section below.

If you do not want to arbitrate disputes with TikTok and you are an individual, you may opt out of this arbitration agreement by sending an email to legal@tiktok.com within thirty (30) days of the first of the date you access or use the Services.

Class Action Waiver. Any Claim must be brought in the respective party's individual capacity, and not as a plaintiff or class member in any purported class, collective, representative, multiple plaintiff, or similar proceeding ("Class Action"). The parties expressly waive any ability to maintain any Class Action in any forum. If the Claim is subject to arbitration, the arbitrator will not have authority to combine or aggregate similar claims or conduct any Class Action nor make an award to any person or entity not a party to the arbitration. Any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void, or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. The parties understand that any right to litigate in court, to have a judge or jury decide their case, or to be a party to a class or representative action, is waived, and that any claims must be decided individually, through arbitration.

If this class action waiver is found to be unenforceable, then the entirety of the Arbitration Agreement, if otherwise effective, will be null and void. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. If for any reason a claim proceeds in court rather than in arbitration, you and TikTok each waive any right to a jury trial.

If a counter-notice is received by TikTok's Copyright Agent, we may send a copy of the counter-notice to the original complaining party informing that person that we may replace the removed content or cease disabling it. Unless the original complaining party files an action seeking a court order against the Content Provider, member or user, the removed content may be replaced, or access to it restored, in ten business days or more after receipt of the counter-notice, at TikTok's sole discretion.

Please understand that filing a counter-notification may lead to legal proceedings between you and the complaining party to determine ownership. Be aware that

there may be adverse legal consequences in your country if you make a false or bad faith allegation by using this process.

California Consumer Rights Notice. Under California Civil Code Section 1789.3, California users of the Services receive the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at the contact information set forth at http://www.dca.ca.gov/about_dca/contactus.shtml.

Users of the Services who are California residents and are under 18 years of age may request and obtain removal of User Content they posted by emailing us at privacy@tiktok.com. All requests must be labeled "California Removal Request" on the email subject line. All requests must provide a description of the User Content you want removed and information reasonably sufficient to permit us to locate that User Content. We do not accept California Removal Requests via postal mail, telephone or facsimile. We are not responsible for notices that are not labeled or sent properly, and we may not be able to respond if you do not provide adequate information.

Exports. You agree that you will not export or re-export, directly or indirectly the Services and/or other information or materials provided by TikTok hereunder, to any country for which the United States or any other relevant jurisdiction requires any export license or other governmental approval at the time of export without first obtaining such license or approval. In particular, but without limitation, the Services may not be exported or re-exported (a) into any U.S. embargoed countries or any country that has been designated by the U.S. Government as a “terrorist supporting” country, or (b) to anyone listed on any U.S. Government list of prohibited or restricted parties, including the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person’s List or Entity List.

U.S. Government Restricted Rights. The Services and related documentation are "Commercial Items", as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only

those rights as are granted to all other end users pursuant to the terms and conditions herein.

App Stores

To the extent permitted by applicable law, the following supplemental terms shall apply when accessing the Platform through specific devices:

Notice regarding Apple.

By downloading the Platform from a device made by Apple, Inc. ("Apple") or from Apple's App Store, you specifically acknowledge and agree that:

- These Terms between TikTok and you; Apple is not a party to these Terms.
- The license granted to you hereunder is limited to a personal, limited, non-exclusive, non-transferable right to install the Platform on the Apple device(s) authorised by Apple that you own or control for personal, non-commercial use, subject to the Usage Rules set forth in Apple's App Store Terms of Services.
- Apple is not responsible for the Platform or the content thereof and has no obligation whatsoever to furnish any maintenance or support services with respect to the Platform.
- In the event of any failure of the Platform to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the Platform, if any, to you. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Platform.
- Apple is not responsible for addressing any claims by you or a third party relating to the Platform or your possession or use of the Platform, including without limitation (a) product liability claims; (b) any claim that the Platform fails to conform to any applicable legal or regulatory requirement; and (c) claims arising under consumer protection or similar legislation.
- In the event of any third party claim that the Platform or your possession and use of the Platform infringes such third party's intellectual property rights, Apple is not responsible for the investigation, defence, settlement or discharge of such intellectual property infringement claim.

- You represent and warrant that (a) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (b) you are not listed on any U.S. Government list of prohibited or restricted parties.
- Apple and its subsidiaries are third party beneficiaries of these Terms and upon your acceptance of the terms and conditions of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third party beneficiary hereof.
- TikTok expressly authorises use of the Platform by multiple users through the Family Sharing or any similar functionality provided by Apple.

Windows Phone Store.

By downloading the Platform from the Windows Phone Store (or its successors) operated by Microsoft, Inc. or its affiliates, you specifically acknowledge and agree that:

- You may install and use one copy of the Platform on up to five (5) Windows Phone enabled devices that are affiliated with the Microsoft account you use to access the Windows Phone Store. Beyond that, we reserve the right to apply additional conditions or charge additional fees.
- You acknowledge that Microsoft Corporation, your phone manufacturer and network operator have no obligation whatsoever to furnish any maintenance and support services with respect to the Platform.

Amazon Appstore.

By downloading the Platform from the Amazon Appstore (or its successors) operated by Amazon Digital Services, Inc. or affiliates ("Amazon"), you specifically acknowledge and agree that:

- to the extent of any conflict between (a) the Amazon Appstore Terms of Use or such other terms which Amazon designates as default end user license terms for the Amazon Appstore ("Amazon Appstore EULA Terms"), and (b) the other terms and conditions in these Terms, the Amazon Appstore EULA Terms shall apply with respect to your use of the Platform that you download from the Amazon Appstore, and

- Amazon does not have any responsibility or liability related to compliance or non-compliance by TikTok or you (or any other user) under these Terms or the Amazon Appstore EULA Terms.

Google Play.

By downloading the Platform from Google Play (or its successors) operated by Google, Inc. or one of its affiliates ("Google"), you specifically acknowledge and agree that:

- to the extent of any conflict between (a) the Google Play Terms of Services and the Google Play Business and Program Policies or such other terms which Google designates as default end user license terms for Google Play (all of which together are referred to as the "Google Play Terms"), and (b) the other terms and conditions in these Terms, the Google Play Terms shall apply with respect to your use of the Platform that you download from Google Play, and

- you hereby acknowledge that Google does not have any responsibility or liability related to compliance or non-compliance by TikTok or you (or any other user) under these Terms or the Google Play Terms.

Contact Us.

You can reach us at info@tiktok.com or write us at TikTok Inc.: 10100 Venice Blvd., Culver City, CA 90232 , USA

Tumblr
https://www.tumblr.com/policy/en/terms-of-service

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Tumblr is a U.S. company and subject to U.S. laws and jurisdiction. The original version of these Terms of Service (and any other terms, policies, or guidelines that we provide to you) are written in English. To the extent any translated version of these Terms of Service (or any other terms, policies, or guidelines that we provide to you) conflicts with the English version, the English version controls.

THESE TERMS OF SERVICE CONTAIN LIMITATIONS OF TUMBLR'S LIABILITY IN SECTION 14.

Hello! Welcome to Tumblr's Terms of Service. Please read this carefully before using our site, services, or products. This is a contract between you and Tumblr. We've also included several annotations that aren't a part of the contract itself, but are intended to emphasize key sections and help you follow the text. We've tried to be fair and straightforward. Please feel free to contact us if you have any questions or suggestions!

1. Accepting the Terms of Service

Please read these Terms of Service and our Community Guidelines (collectively, the "**Agreement**") carefully before using tumblr.com (the "**Site**") and/or the other domains, websites, products, applications, mobile applications, services, and/or Content provided by Tumblr, Inc. (all of those collectively with the Site, the "**Services**") (Tumblr, Inc., a Delaware corporation and wholly-owned subsidiary of Automattic Inc., a Delaware corporation ("**Automattic**"), collectively with its agents, representatives, consultants, employees, officers, and directors, "**Tumblr**," "**we**," or "**us**"). By using or accessing the Services, you ("**Subscriber**" or "**you**") agree to be bound by all the terms and conditions of this Agreement. If you don't agree to all the terms and conditions of this Agreement, you shouldn't, and aren't permitted to, use the Services. Tumblr's personalized Services cannot be provided and the terms of this Agreement cannot be performed without Tumblr processing information about you and other users. Processing of the information you share with Tumblr is essential to the personalized Services which we provide and which you expect, including personalized Content (as described below) and ads, and is a necessary part of our performance of the agreement we have with you.

We're just letting you know, here, that Tumblr is now part of Automattic, a technology company that empowers people to build beautiful websites, tell their stories, and find and grow their audience and these Terms of Service , which apply to your use of Tumblr, have been updated to reflect this change. This section also includes an agreement where you're agreeing to agree to the terms of this Agreement.

2. Modifications to this Agreement

Tumblr reserves the right to modify this Agreement by (1) posting a revised Agreement on and/or through the Services and (2) providing notice to you that this Agreement has changed,

generally via email where practicable, and otherwise through the Services (such as through a notification on your Tumblr Dashboard or in our mobile applications). Modifications will not apply retroactively. You are responsible for reviewing and becoming familiar with any modifications to this Agreement.

We may sometimes ask you to review and to explicitly agree to (or reject) a revised version of this Agreement. In such cases, modifications will be effective at the time of your agreement to the modified version of this Agreement. If you do not agree at that time, you are not permitted to use the Services.

In cases where we do not ask for your explicit agreement to a modified version of this Agreement, but otherwise provide notice as set forth above, the modified version of this Agreement will become effective fourteen days after we have posted the modified Agreement and provided you notification of the modifications. Your use of the Services following that period constitutes your acceptance of the terms and conditions of this Agreement as modified. If you do not agree to the modifications, you are not permitted to use, and should discontinue your use of, the Services.

Note that, if you have prepaid for any Paid Services (as defined below) prior to a modification of this Agreement, your use of such prepaid Paid Services is governed by the version of this Agreement in effect at the time Tumblr received your prepayment.

As Tumblr grows and improves, we might have to make changes to these Terms of Service. When we do, we'll let you know. We're also going to make it a practice to post old versions so it's easy to see changes/additions/deletions. To see old versions, scroll down to the end of this document.

3. Use of the Services

Eligibility:

You may not use the Services, provide any personal information to Tumblr, or otherwise submit personal information through the Services (including, for example, a name, address, telephone number, or email address) if you are under the Minimum Age. The Minimum Age is (i) thirteen (13), or (ii) for users in the European Union, sixteen (16) (or the lower age that your country has provided for you to consent to the processing of your personal data) . You may only use the Services if you can form a binding contract with Tumblr and are not legally prohibited from using the Services.

You have to be the Minimum Age to use Tumblr. We're serious: it's a hard rule. “But I’m, like, almost old enough!” you plead. Nope, sorry. If you're not old enough, don't use Tumblr. Ask your parents for a Playstation 4, or try books.

Service Changes and Limitations:

The Services change frequently, and their form and functionality may change without prior notice to you. Tumblr retains the right to create limits on and related to use of the Services in its sole discretion at any time with or without notice. Tumblr may also impose limits on certain

Services or aspects of those Services or restrict your access to parts or all of the Services without notice or liability. Tumblr may change, suspend, or discontinue any or all of the Services at any time, including the availability of any product, feature, database, or Content (as defined below). Tumblr may also terminate or suspend Accounts (as defined below) at any time, in its sole discretion.

Tumblr is an ever-evolving platform. With new products, services, and features launching all the time, we need flexibility to make changes, impose limits, and occasionally suspend or terminate certain offerings (like features that flop). We can also terminate or suspend any account at any time. That sounds harsh, but we only use that power when we have a reason, as outlined in these Terms of Service, our Privacy Policy , and our Community Guidelines.

Limitations on Automated Use:

You may not, without express prior written permission, do any of the following while accessing or using the Services: (a) tamper with, or use non-public areas of the Services, or the computer or delivery systems of Tumblr and/or its service providers; (b) probe, scan, or test any system or network (particularly for vulnerabilities), or otherwise attempt to breach or circumvent any security or authentication measures; (c) access or search or attempt to access or search the Services by any means (automated or otherwise) other than through our currently available, published interfaces that are provided by Tumblr (and only pursuant to those terms and conditions) or unless permitted by Tumblr's robots.txt file or other robot exclusion mechanisms; (d) scrape the Services, and particularly scrape Content (as defined below) from the Services; (e) use the Services to send altered, deceptive, or false source-identifying information, including without limitation by forging TCP-IP packet headers or email headers; or (f) interfere with, or disrupt, (or attempt to do so), the access of any Subscriber, host or network, including, without limitation, by sending a virus to, spamming, or overloading the Services, or by scripted use of the Services in such a manner as to interfere with or create an undue burden on the Services.

Don't do bad things to Tumblr or to other users. Some particularly egregious examples of "bad things" are listed in this section.

4. Registration, Tumblr URLs, and Security

As a condition to using certain of the Services and in order for us to provide them to you, you may be required to create an account (an "**Account**"), provide your age and an email address and select a password and Tumblr username, which will serve as a default link to your default Tumblr blog of the form [username].tumblr.com (a "**Tumblr URL**"). You must select a different Tumblr URL for each new blog you create.

You agree to provide Tumblr with accurate, complete, and updated registration information, particularly your email address.

It's really important that the email address associated with your Tumblr account is accurate and up-to-date. If you ever forget your password - or worse, fall victim to a malicious phishing attack - a working email address is often the only way for us to recover your account.

You are also responsible for maintaining the confidentiality of your Account password and for the security of your Account, and you will notify Tumblr immediately of any actual or suspected loss, theft, or unauthorized use of your Account or Account password.

5. Privacy

For information about how Tumblr collects, uses, and shares your information, please review our Privacy Policy. By using the Services you agree you have read the Privacy Policy, which describes our collection, use, and sharing (as set forth in the Privacy Policy) of such information, including the transfer of this information to the United States and/or other countries for storage, processing, and use by Tumblr and the Tumblr Affiliates (as defined below).

6. Content and Subscriber Content

Definitions:

For purposes of this Agreement: (1) the term "**Content**" means a creative expression and includes, without limitation, video, audio, photographs, images, illustrations, animations, logos, tools, written posts, replies, comments, information, data, text, software, scripts, executable files, graphics, Themes (as defined below), and interactive features, any of which may be generated, provided, or otherwise made accessible on or through the Services; (2) the term "**Subscriber Content**" means Content that a Subscriber submits, transfers, or otherwise provides to the Services. Content includes, without limitation, all Subscriber Content.

Your Rights in Subscriber Content:

Subscribers retain ownership and/or other applicable rights in Subscriber Content, and Tumblr and/or third parties retain ownership and/or other applicable rights in all Content other than Subscriber Content.

You retain ownership you have of any intellectual property you post to Tumblr.

Subscriber Content License to Tumblr:

When you provide Subscriber Content to Tumblr through the Services, you grant Tumblr a non-exclusive, worldwide, royalty-free, sublicensable, transferable right and license to use, host, store, cache, reproduce, publish, display (publicly or otherwise), perform (publicly or otherwise), distribute, transmit, modify, adapt (including, without limitation, in order to conform it to the requirements of any networks, devices, services, or media through which the Services are available), and create derivative works of, such Subscriber Content. The rights you grant in this license are for the limited purposes of allowing Tumblr to operate the Services in accordance with their functionality, improve and promote the Services, and develop new Services. The reference in this license to "creat[ing] derivative works" is not intended to give Tumblr a right to make substantive editorial changes or derivations, but does, for example, enable **reblogging**, which allows Tumblr Subscribers to redistribute Subscriber Content from one Tumblr blog to another in a manner that allows them to add their own text or other Content before or after your Subscriber Content.

When you upload your creations to Tumblr, you're giving us permission to make them available in all the ways you would expect us to (for example, via your blog, RSS, the Tumblr Dashboard, etc.). We never want to do anything with your work that surprises you.

Something else worth noting: Countless Tumblr blogs have gone on to spawn books, films, albums, brands, and more. Any royalties or reimbursement you get for your creations are, needless to say, entirely yours. It's your work, and we're proud to be a part (however small) of what you accomplish.

You also agree that this license includes the right for Tumblr to make all publicly-posted Content available to third parties selected by Tumblr, so that those third parties can syndicate and/or analyze such Content on other media and services.

An example of what it means to "make all publicly-posted Content available" to a Tumblr partner for distribution or analysis would be licensing the Tumblr "firehose," a live feed of all public activity on Tumblr, to partners like search engines.

Note also that this license to your Subscriber Content continues even if you stop using the Services, primarily because of the social nature of Content shared through Tumblr's Services - when you post something publicly, others may choose to comment on it, making your Content part of a social conversation that can't later be erased without retroactively censoring the speech of others.

One thing you should consider before posting: When you make something publicly available on the Internet, it becomes practically impossible to take down all copies of it.

You also agree that you will respect the intellectual property rights of others, and represent and warrant that you have all of the necessary rights to grant us this license for all Subscriber Content you transfer to us.

Tumblr may add its own affiliate code to links posted on Tumblr at its discretion, provided a user has not previously included their own affiliate code into the applicable link. Users may opt out of this functionality here.

Content License to You:

As a Subscriber of the Services, Tumblr grants you a worldwide, revocable, non-exclusive, non-sublicensable, and non-transferable license to download, store, view, display, perform, redistribute, and create derivative works of Content solely in connection with your use of, and in strict accordance with the functionality and restrictions of, the Services (including, without limitation, Paid Services, as defined below). This means, for example, that we license Content to you for purposes of reblogging.

Compliance with Community Guidelines:

You agree that you won't violate Tumblr's Community Guidelines.

Termination and Deletion:

On termination of your Account, or upon your deletion of particular pieces of Subscriber Content from the Services, Tumblr shall make reasonable efforts to make such Subscriber Content inaccessible and cease use of it and, if required by the applicable Privacy Policy, delete your Account data and / or Subscriber Content unless permitted or required to keep this data in accordance with law; however, you acknowledge and agree that: (a) deleted Subscriber Content may persist in caches or backups for a reasonable period of time and (b) copies of or references to the Subscriber Content may not be entirely removed (due to the nature of reblogging, for example). You can delete your account at any time here.

7. Special Provisions for Application Developers

If you develop software or services based on the Services or any Content, whether using the Tumblr Application Programming Interface or not, you will agree to and comply with the Tumblr Application Developer and API License Agreement.

8. Use of Trademarks

Any use of Tumblr's trademarks, branding, logos, and other such assets in connection with the Services shall use Tumblr's approved branding and shall be in accordance with the Tumblr Trademark Guidelines.

9. Themes

Tumblr makes available specialized HTML and CSS code ("**Tumblr Template Code**") for the design and layout of blog pages available for use on some of the Services ("**Themes**"). Certain Themes are available for purchase as a Paid Service (as defined below) (such Themes, "**Premium Themes**"). Purchased Premium Themes may not be transferred between Accounts, between blogs, or between Services on a single Account and are subject to the payment terms herein.

Tumblr grants you a license to customize the Tumblr Template Code to create your own Themes for use on your blog page (each a "**Custom Theme**"). If you choose, you may also contribute your Custom Themes for use by other Subscribers as Subscriber Content. However, as a condition of this license allowing you to create Custom Themes, you agree that you won't distribute such Custom Themes from locations other than Tumblr-owned or approved websites without our permission, as set out in our Community Guidelines.

Note also that other Subscribers may use your Custom Themes after you have removed them from distribution, and you hereby grant those Subscribers an irrevocable license to use those Custom Themes as contributed by you. In other words, you can remove and stop distribution of your Custom Themes, but Subscribers who are already using them can keep using them.

To develop and distribute Custom Themes that are Premium Themes, please contact us.

10. Paid Services

Some of the Services require payment of fees (the "**Paid Services**," including without limitation Premium Themes). All fees are stated in United States dollars. You shall pay all applicable fees,

as described in the applicable Services, in connection with such Services, and any related taxes or additional charges.

Paid Services are limited licenses for you to use particular for-pay aspects of the Services. Usage of terms like sell, sale, buy, purchase, or similar terms all refer to your acquisition of a license to use Paid Services, and do not represent any transfer of any right, title, or ownership interest of any kind. You may not relicense, resell, transfer, or exchange Paid Services within or outside of the Services, except as expressly allowed by the rules of those Paid Services.

Tumblr may, in its sole discretion, modify the functionality of, or eliminate, Paid Services, or the terms and conditions under which Paid Services are provided.

Purchases of Paid Services are final and non-refundable (particularly those Paid Services that may be used immediately, such as Promotions, as defined below), except at Tumblr's sole discretion and in accordance with the rules governing each Paid Service. Termination of your Account or your rights under this Agreement may result in forfeiture of purchased Paid Services. For example, if your Account is suspended, you forfeit your license to any Premium Themes you have purchased.

Tumblr may change its prices for Paid Services at any time. To the extent applicable, Tumblr will provide you reasonable notice of any such pricing changes by posting the new prices on or through the applicable Paid Service and/or by sending you an email notification. If you do not wish to pay the new prices, you may choose not to purchase, or to cancel, the applicable Paid Service prior to the change going into effect.

11. Special Provisions for Promotions

Some features of the Services may allow you to promote yourself to other Subscribers, and some of these features may be Paid Services ("**Promotions**").

The following additional terms apply to Promotions:

Things that you promote will comply with this Agreement; if they don't, Tumblr reserves the right, in its sole discretion, to cancel a Promotion without refund or recourse to you.

Tumblr may remove or disable any Promotion for any reason in its sole discretion.

Unless otherwise specified, Tumblr does not guarantee any activity that Promotions may receive, including but not limited to clicks, Likes, and Reblogs. Tumblr cannot control how Subscribers interact with Promotions and is not responsible for "click fraud" or other fraudulent actions by third parties, including, without limitation, Subscribers. Tumblr doesn't guarantee that its reporting related to Promotions will be accurate or complete, nor does it guarantee that Promotions will behave in a particular manner, and Tumblr shall not be liable to you or responsible for any erroneous reporting about or errant behavior of or related to Promotions (e.g., any errors in how Likes or Reblogs are counted).

Promotions may allow targeting to some Subscriber characteristics. Tumblr does not guarantee that any particular Promotion will reach a particular sort of individual in all cases.

You can cancel certain Promotions at any time depending on their functionality, but you are responsible for paying for Promotions at least to the extent they have already been used or distributed through the Services.

By submitting a Promotion, you license Tumblr to run that Promotion for as long as you have specified, which, depending on the Promotion, may be perpetually. This license ends when the Promotion has been completed or cancelled, but it may take up to forty eight (48) hours for a Promotion to stop being reflected on the Services.

12. Warranty Disclaimer; Services Available on an "AS IS" Basis

Your access to and use of the Services or any Content is at your own risk. YOU UNDERSTAND AND AGREE THAT THE SERVICES ARE PROVIDED TO YOU ON AN "AS IS" AND "AS AVAILABLE" BASIS. WITHOUT LIMITING THE FOREGOING, TO THE FULL EXTENT PERMITTED BY LAW, TUMBLR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. Tumblr makes no representations or warranties of any kind with respect to the Services, including any representation or warranty that the use of the Services will (a) be timely, uninterrupted or error-free or operate in combination with any other hardware, software, system, or data, (b) meet your requirements or expectations, (c) be free from errors or that defects will be corrected, (d) be free of viruses or other harmful components; or (e) be entirely secure or that the information you share with us will be secure. Tumblr also makes no representations or warranties of any kind with respect to Content; Subscriber Content, in particular, is provided by and is solely the responsibility of, the Subscribers providing that Content. No advice or information, whether oral or written, obtained from Tumblr or through the Services, will create any warranty not expressly made herein.

13. Time Limitation on Claims and Releases From Liability

You agree that any claim you may have arising out of or related to this Agreement or your relationship with Tumblr must be filed within one year after such claim arose; otherwise, your claim is permanently barred.

You further release, to the fullest extent permitted by law, Tumblr and its employees, agents, consultants, directors, shareholders, any other person or entity that directly or indirectly controls, is under common control with, or is directly or indirectly controlled by, Tumblr (the “Tumblr Affiliates”) from responsibility, liability, claims, demands, and/or damages (actual and consequential) of every kind and nature, known and unknown (including but not limited to claims of negligence), arising out of or related to the following:

Disputes between Subscribers, including those between you and other Subscribers.

The acts of third parties generally (i.e., individuals or entities who are not Tumblr or a Tumblr Affiliate), including third party sites and services.

Disputes concerning any use of or action taken using your Account by you or a third party.

Claims relating to the unauthorized access to any data communications relating to, or Content stored under or relating to, your Account, including but not limited to unauthorized interception, use, or alteration of such communications or your Content. For the sake of clarity, this includes any and all claims related to the security of your Account credentials.

Claims relating to any face-to-face meetings in any way related to Tumblr at any venues ("**Meetups**"), including without limitation claims related to the actions or omissions of any Subscribers or third parties who organize, attend, or are otherwise involved in any Meetups. Unless otherwise expressly disclosed in writing, Tumblr does not sponsor, oversee, or in any manner control Meetups.

If you are a California resident, you waive California Civil Code § 1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

14. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TUMBLR AND THE TUMBLR AFFILIATES SHALL NOT BE LIABLE FOR: (A) ANY INDIRECT, INCIDENTAL, EXEMPLARY PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER; (B) LOSS OF: PROFITS, REVENUE, DATA, USE, GOODWILL, OR OTHER INTANGIBLE LOSSES; (C) DAMAGES RELATING TO YOUR ACCESS TO, USE OF, OR INABILITY TO ACCESS OR USE THE SERVICES; (D) DAMAGES RELATING TO ANY CONDUCT OR CONTENT OF ANY THIRD PARTY OR SUBSCRIBER USING THE SERVICES, INCLUDING WITHOUT LIMITATION, DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OR CONTENT; AND/OR (E) DAMAGES IN ANY MANNER RELATING TO ANY CONTENT. THIS LIMITATION APPLIES TO ALL CLAIMS, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, WHETHER OR NOT TUMBLR HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND FURTHER WHERE A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL LIABILITY OF TUMBLR AND THE TUMBLR AFFILIATES, FOR ANY CLAIM UNDER THIS AGREEMENT, INCLUDING FOR ANY IMPLIED WARRANTIES, IS LIMITED TO THE GREATER OF ONE HUNDRED DOLLARS (US $100.00) OR THE AMOUNT YOU PAID US TO USE THE APPLICABLE SERVICE(S).

15. Exclusions to Warranties and Limitation of Liability

Some jurisdictions may not allow the exclusion of certain warranties or the exclusion/limitation of liability as set forth in Section 14, so the limitations above may not apply to you.

16. Termination

Either party may terminate this Agreement at any time by notifying the other party. Tumblr may terminate or suspend your access to or ability to use any and all Services immediately, without

prior notice or liability, for any reason or no reason, including but not limited to if you breach any of the terms or conditions of this Agreement. In particular, Tumblr may immediately terminate or suspend Accounts that have been flagged for repeat copyright infringement.

Upon termination of your access to or ability to use a Service, including but not limited to suspension of your Account on a Service, your right to use or access that Service and any Content will immediately cease. All provisions of this Agreement that by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, and limitations of liability. Termination of your access to and use of the Services shall not relieve you of any obligations arising or accruing prior to such termination or limit any liability that you otherwise may have to Tumblr or any third party and shall not relieve you of your rights if you are a user in the European Economic Area which are described in the Privacy Policy.

17. Choice of Law and Venue

You and Tumblr agree that we will resolve any claim or controversy at law or equity that arises out of this Agreement or the Services in accordance with this Section or as you and Tumblr otherwise agree in writing. Before resorting to formal dispute resolution, we strongly encourage you to contact us to seek a resolution.

Law and Forum for Legal Disputes:

This Agreement shall be governed in all respects by the laws of the State of New York as they apply to agreements entered into and to be performed entirely within New York between New York residents, without regard to conflict of law provisions. You agree that any claim or dispute you may have against Tumblr must be resolved exclusively by a state or federal court located in New York County, New York, except as otherwise agreed by the parties. You agree to submit to the personal jurisdiction of the courts located within New York County, New York for the purpose of litigating all such claims or disputes.

If you are (a) a United States federal, state, or local government agency or body, (b) using the Services in your official capacity, and (c) legally unable to accept the clauses in this Section, then this Section doesn't apply to you. For such entities, this Agreement and any related action will be governed by the laws of the United States of America, without regard to conflict of law provisions, and, in the absence of federal law and to the extent permitted under federal law, the laws of the State of New York, excluding choice of law.

18. Miscellaneous

This Agreement, as modified from time to time, constitutes the entire agreement between you and Tumblr with respect to the subject matter hereof. This Agreement replaces all prior or contemporaneous understandings or agreements, written or oral, regarding the subject matter hereof and constitutes the entire and exclusive agreement between the parties. The failure of either party to exercise, in any way, any right provided for herein shall not be deemed a waiver of any further rights hereunder. If any provision of this Agreement is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain enforceable and in full force and effect. This Agreement

is not assignable, transferable, or sublicensable by you except with Tumblr's prior written consent. Tumblr may assign this Agreement in whole or in part at any time without your consent. No agency, partnership, joint controllership, joint venture, or employment is created as a result of this Agreement and you do not have any authority of any kind to bind Tumblr in any respect whatsoever. Any notice to Tumblr that is required or permitted by this Agreement shall be in writing and shall be deemed effective upon receipt, when delivered in person by nationally recognized overnight courier or mailed by first class, registered or certified mail, postage prepaid, to

- Tumblr, Inc.
- 12 E. 49th St. 11th Flr.
- New York, NY, 10017,
- Attn: Legal Department

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19. Special Provisions for Subscribers Located Outside of the United States

Tumblr provides global products and services and enables a global community for individuals to share and follow the things they love. Tumblr's servers and operations are, however, located in the United States, and Tumblr's policies and procedures are based on United States law. As such, the following provisions apply specifically to Subscribers located outside of the United States: (1) you acknowledge that we will transfer, store, and process your information, including but not limited to Subscriber Content and any personal information, in the United States and/or other countries in order to provide you with the Services and perform this Agreement; and (2) if you are using the Services from a country embargoed by the United States, or are on the United States Treasury Department's list of "Specially Designated Nationals," you agree that you will not engage in financial transactions, or conduct any commercial activities using or through the Services (for example, purchasing Premium Themes).

Submit an infringement notice

20. DMCA Copyright Policy

Tumblr has adopted the following policy toward copyright infringement on the Services in accordance with the Digital Millennium Copyright Act (the "**DMCA**"). The address of Tumblr's Designated Agent for copyright takedown notices ("**Designated Agent**") is listed below. You may submit a notice under the DMCA using our copyright notice form.

Reporting Instances of Copyright Infringement:

If you believe that Content residing or accessible on or through the Services infringes a copyright, please send a notice of copyright infringement containing the following information to the Designated Agent at the address below:

Identification of the work or material being infringed.

Identification of the material that is claimed to be infringing, including its location, with sufficient detail so that Tumblr is capable of finding it and verifying its existence.

Contact information for the notifying party (the "Notifying Party"), including name, address, telephone number, and email address.

A statement that the Notifying Party has a good faith belief that the material is not authorized by the copyright owner, its agent or law.

A statement made under penalty of perjury that the information provided in the notice is accurate and that the Notifying Party is authorized to make the complaint on behalf of the copyright owner.

A physical or electronic signature of a person authorized to act on behalf of the owner of the copyright that has been allegedly infringed.

Please also note that the information provided in a notice of copyright infringement may be forwarded to the Subscriber who posted the allegedly infringing content. After removing material pursuant to a valid DMCA notice, Tumblr will immediately notify the Subscriber responsible for the allegedly infringing material that it has removed or disabled access to the material. Tumblr will terminate, under appropriate circumstances, the Accounts of Subscribers who are repeat copyright infringers, and reserves the right, in its sole discretion, to terminate any Subscriber for actual or apparent copyright infringement.

Submitting a DMCA Counter-Notification:

If you believe you are the wrongful subject of a DMCA notification, you may file a counter-notification with Tumblr by providing the following information to the Designated Agent at the address below:

The specific URLs of material that Tumblr has removed or to which Tumblr has disabled access.

Your name, address, telephone number, and email address.

A statement that you consent to the jurisdiction of Federal District Court for the judicial district in which your address is located (or the federal district courts located in New York County, New York if your address is outside of the United States), and that you will accept service of process from the person who provided the original DMCA notification or an agent of such person.

The following statement: "I swear, under penalty of perjury, that I have a good faith belief that the material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled."

Your signature.

Upon receipt of a valid counter-notification, Tumblr will forward it to Notifying Party who submitted the original DMCA notification. The original Notifying Party (or the copyright holder he or she represents) will then have ten (10) days to notify us that he or she has filed legal action relating to the allegedly infringing material. If Tumblr does not receive any such notification within ten (10) days, we may restore the material to the Services.

Designated Agent

Tumblr, Inc.
12 E. 49th St. 2nd Flr.
New York, NY 10017
Attn: Copyright Agent
Fax: +1 (646) 513-4321
Copyright notice form: https://www.tumblr.com/dmca

21. Open Source Disclosures

You can find disclosures related to our use of open source software packages at the following locations:

https://www.tumblr.com/policy/ios-credits

https://www.tumblr.com/policy/android-credits

https://www.tumblr.com/policy/web-credits

Link to Prior Versions

You will find prior versions of our Terms of Service on GitHub, which will allow you to compare historical versions and see which terms have been updated.

https://github.com/tumblr/policy/commits/master/terms-of-service.txt

Twitch
https://www.twitch.tv/p/legal/terms-of-service/

1. Introduction; Your Agreement to these Terms of Service

PLEASE READ THESE TERMS OF SERVICE CAREFULLY. THIS IS A BINDING CONTRACT. Welcome to the services operated by Twitch Interactive, Inc. (collectively with its affiliates, "Twitch" or "We") consisting of the website available at https://www.twitch.tv, and its network of websites, software applications, or any other products or services offered by Twitch (the "Twitch Services"). Other services offered by Twitch may be subject to separate terms.

When using the Twitch Services, you will be subject to Twitch's Community Guidelines and additional guidelines or rules that are posted on the Twitch Services, made available to you, or disclosed to you in connection with specific services and features. Twitch may also offer certain paid services, which are subject to the Twitch Terms of Sale as well as any additional terms or conditions that are disclosed to you in connection with such services. All such terms and guidelines (the "Guidelines") are incorporated into these Terms of Service by reference.

The Terms of Service apply whether you are a user that registers an account with the Twitch Services or an unregistered user. You agree that by clicking "Sign Up" or otherwise registering, downloading, accessing, or using the Twitch Services, you are entering into a legally binding agreement between you and Twitch regarding your use of the Twitch Services. You acknowledge that you have read, understood, and agree to be bound by these Terms of Service. If you do not agree to these Terms of Service, do not access or otherwise use any of the Twitch Services.

When using Twitch or opening an account with Twitch on behalf of a company, entity, or organization (collectively, "Subscribing Organization"), you represent and warrant that you: (i) are an authorized representative of that Subscribing Organization with the authority to bind that organization to these Terms of Service and grant the licenses set forth herein; and (ii) agree to these Terms of Service on behalf of such Subscribing Organization.

2. Use of Twitch by Minors and Blocked Persons

The Twitch Services are not available to persons under the age of 13. If you are between the ages of 13 and the age of legal majority in your jurisdiction of

residence, you may only use the Twitch Services under the supervision of a parent or legal guardian who agrees to be bound by these Terms of Service.

The Twitch Services are also not available to any users previously removed from the Twitch Services by Twitch or to any persons barred from receiving them under the laws of the United States (such as its export and re-export restrictions and regulations) or applicable laws in any other jurisdiction.

BY DOWNLOADING, INSTALLING, OR OTHERWISE USING THE TWITCH SERVICES, YOU REPRESENT THAT YOU ARE AT LEAST 13 YEARS OF AGE, THAT YOUR PARENT OR LEGAL GUARDIAN AGREES TO BE BOUND BY THESE TERMS OF SERVICE IF YOU ARE BETWEEN 13 AND THE AGE OF LEGAL MAJORITY IN YOUR JURISDICTION OF RESIDENCE, AND THAT YOU HAVE NOT BEEN PREVIOUSLY REMOVED FROM AND ARE NOT PROHIBITED FROM RECEIVING THE TWITCH SERVICES.

3. Privacy Notice

Your privacy is important to Twitch. Please see our Privacy Notice for information relating to how we collect, use, and disclose your personal information, and our Privacy Choices on how you can manage your online privacy when you use the Twitch Services.

4. Account

a. Account and Password

In order to open an account, you will be asked to provide us with certain information such as an account name and password.

You are solely responsible for maintaining the confidentiality of your account, your password and for restricting access to your computer. If you permit others to use your account credentials, you agree to these Terms of Service on behalf of all other persons who use the Services under your account or password, and you are responsible for all activities that occur under your account or password. Please make sure the information you provide to Twitch upon registration and at all other times is true, accurate, current, and complete to the best of your knowledge.

Unless expressly permitted in writing by Twitch, you may not sell, rent, lease, share, or provide access to your account to anyone else, including without limitation, charging anyone for access to administrative rights on your account.

Twitch reserves all available legal rights and remedies to prevent unauthorized use of the Twitch Services, including, but not limited to, technological barriers, IP mapping, and, in serious cases, directly contacting your Internet Service Provider (ISP) regarding such unauthorized use.

b. Third-Party Accounts

Twitch may permit you to register for and log on to the Twitch Services via certain third-party services. The third party's collection, use, and disclosure of your information will be subject to that third-party service's privacy notice. Further information about how Twitch collects, uses, and discloses your personal information when you link your Twitch account with your account on any third-party service can be found in our Privacy Notice.

5. Use of Devices and Services

Access to the Twitch Services may require the use of your personal computer or mobile device, as well as communications with or use of space on such devices. You are responsible for any Internet connection or mobile fees and charges that you incur when accessing the Twitch Services.

6. Modification of these Terms of Service

Twitch may amend any of the terms of these Terms of Service by posting the amended terms. Your continued use of the Twitch Services after the effective date of the revised Terms of Service constitutes your acceptance of the terms.

For residents of the Republic of Korea, Twitch will provide reasonable prior notice regarding any material amendments to its Terms of Service. All amendments shall become effective no sooner than 30 calendar days after posting; provided that any amendment regarding newly available features of the Service, features of the Service that are beneficial to the user, or changes made for legal reasons may become effective immediately.

7. License

The Twitch Services are owned and operated by Twitch. Unless otherwise indicated, all content, information, and other materials on the Twitch Services (excluding User Content, set out in Section 8 below), including, without limitation, Twitch's trademarks and logos, the visual interfaces, graphics, design, compilation, information, software, computer code (including source code or object code), services, text, pictures, information, data, sound files, other files, and the selection

and arrangement thereof (collectively, the "Materials") are protected by relevant intellectual property and proprietary rights and laws. All Materials are the property of Twitch or its subsidiaries or affiliated companies and/or third-party licensors. Unless otherwise expressly stated in writing by Twitch, by agreeing to these Terms of Service you are granted a limited, non-sublicensable license (i.e., a personal and limited right) to access and use the Twitch Services for your personal use or internal business use only.

Twitch reserves all rights not expressly granted in these Terms of Service. This license is subject to these Terms of Service and does not permit you to engage in any of the following: (a) resale or commercial use of the Twitch Services or the Materials; (b) distribution, public performance or public display of any Materials; (c) modifying or otherwise making any derivative uses of the Twitch Services or the Materials, or any portion of them; (d) use of any data mining, robots, or similar data gathering or extraction methods; (e) downloading (except page caching) of any portion of the Twitch Services, the Materials, or any information contained in them, except as expressly permitted on the Twitch Services; or (f) any use of the Twitch Services or the Materials except for their intended purposes. Any use of the Twitch Services or the Materials except as specifically authorized in these Terms of Service, without the prior written permission of Twitch, is strictly prohibited and may violate intellectual property rights or other laws. Unless explicitly stated in these Terms of Service, nothing in them shall be interpreted as conferring any license to intellectual property rights, whether by estoppel, implication, or other legal principles. Twitch can terminate this license as set out in Section 14.

8. User Content

Twitch allows you to distribute streaming live and pre-recorded audio-visual works; to use services, such as chat, bulletin boards, forum postings, wiki contributions, and voice interactive services; and to participate in other activities in which you may create, post, transmit, perform, or store content, messages, text, sound, images, applications, code, or other data or materials on the Twitch Services ("User Content").

a. License to Twitch

(i) Unless otherwise agreed to in a written agreement between you and Twitch that was signed by an authorized representative of Twitch, if you submit, transmit, display, perform, post, or store User Content using the Twitch Services, you grant Twitch and its sub-licensees, to the furthest extent and for the maximum duration permitted by applicable law (including in perpetuity if permitted under applicable

law), an unrestricted, worldwide, irrevocable, fully sub-licenseable, nonexclusive, and royalty-free right to: (a) use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform, and display such User Content (including without limitation for promoting and redistributing part or all of the Twitch Services (and derivative works thereof) in any form, format, media, or media channels now known or later developed or discovered; and (b) use the name, identity, likeness, and voice (or other biographical information) that you submit in connection with such User Content. Should such User Content contain the name, identity, likeness, and voice (or other biographical information) of third parties, you represent and warrant that you have obtained the appropriate consents and/or licenses for your use of such features and that Twitch and its sub-licensees are allowed to use them to the extent indicated in these Terms of Service.

(ii) With respect to User Content known as “add-ons”, “maps”, “mods”, or other types of projects submitted through CurseForge.com or related sites (the “Submitted Projects”), the rights granted by you hereunder terminate once you remove or delete such Submitted Projects from the Twitch Services. You also acknowledge that Twitch may retain, but not display, distribute, or perform, server copies of Submitted Projects that have been removed or deleted.

(iii) With respect to streaming live and pre-recorded audio-visual works, the rights granted by you hereunder terminate once you delete such User Content from the Twitch Services, or generally by closing your account, except:(a) to the extent you shared it with others as part of the Twitch Services and others copied or stored portions of the User Content (e.g., made a Clip); (b) Twitch used it for promotional purposes; and (c) for the reasonable time it takes to remove from backup and other systems.

b. User Content Representations and Warranties

You are solely responsible for your User Content and the consequences of posting or publishing it. You represent and warrant that: (1) you are the creator or own or control all right in and to the User Content or otherwise have sufficient rights and authority to grant the rights granted herein; (2) your User Content does not and will not: (a) infringe, violate, or misappropriate any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right, or (b) defame any other person; (3) your User Content does not contain any viruses, adware, spyware, worms, or other harmful or malicious code; and (4) unless you have received prior written authorization, your User Content specifically does not contain any pre-release or non-public beta software or game content or any confidential

information of Twitch or third parties. Twitch reserves all rights and remedies against any users who breach these representations and warranties.

c. Content is Uploaded at Your Own Risk

Twitch uses reasonable security measures in order to attempt to protect User Content against unauthorized copying and distribution. However, Twitch does not guarantee that any unauthorized copying, use, or distribution of User Content by third parties will not take place. To the furthest extent permitted by applicable law, you hereby agree that Twitch shall not be liable for any unauthorized copying, use, or distribution of User Content by third parties and release and forever waive any claims you may have against Twitch for any such unauthorized copying or usage of the User Content, under any theory. THE SECURITY MEASURES TO PROTECT USER CONTENT USED BY TWITCH HEREIN ARE PROVIDED AND USED "AS-IS" AND WITH NO WARRANTIES, GUARANTEES, CONDITIONS, ASSURANCES, OR OTHER TERMS THAT SUCH SECURITY MEASURES WILL WITHSTAND ATTEMPTS TO EVADE SECURITY MECHANISMS OR THAT THERE WILL BE NO CRACKS, DISABLEMENTS, OR OTHER CIRCUMVENTION OF SUCH SECURITY MEASURES.

d. Promotions

Users may promote, administer, or conduct a promotion (e.g., a contest or sweepstakes) on, through, or utilizing the Twitch Services (a "Promotion"). If you choose to promote, administer, or conduct a Promotion, you must adhere to the following rules: (1) You may carry out Promotions to the extent permitted by applicable law and you are solely responsible for ensuring that any Promotions comply with any and all applicable laws, obligations, and restrictions; (2) You will be classified as the promoter of your Promotion in the applicable jurisdiction(s) and you will be solely responsible for all aspects of and expenses related to your Promotion, including without limitation the execution, administration, and operation of the Promotion; drafting and posting any official rules; selecting winners; issuing prizes; and obtaining all necessary third-party permissions and approvals, including without limitation filing any and all necessary registrations and bonds. Twitch has the right to remove your Promotion from the Twitch Services if Twitch reasonably believes that your Promotion does not comply with the Terms of Service or applicable law; (3) Twitch is not responsible for and does not endorse or support any such Promotions. You may not indicate that Twitch is a sponsor or co-sponsor of the Promotion; and (4) You will display or read out the following disclaimer when promoting, administering, or conducting a Promotion:

"This is a promotion by [Your Name]. Twitch does not sponsor or endorse this promotion and is not responsible for it.".

e. Endorsements/Testimonials

You agree that your User Content will comply with the FTC's Guidelines Concerning the Use of Testimonials and Endorsements in Advertising, the FTC's Disclosures Guide, the FTC's Native Advertising Guidelines, and any other guidelines issued by the FTC from time to time (the "FTC Guidelines"), as well as any other advertising guidelines required under applicable law. For example, if you have been paid or provided with free products in exchange for discussing or promoting a product or service through the Twitch Services, or if you are an employee of a company and you decide to discuss or promote that company's products or services through the Twitch Services, you agree to comply with the FTC Guidelines' requirements for disclosing such relationships. You, and not Twitch, are solely responsible for any endorsements or testimonials you make regarding any product or service through the Twitch Services.

f. Political Activity

Subject to these Terms of Service and the Community Guidelines, you may share political opinions; participate in political activity; provide links to a political committee's official website, including the contribution page of a political committee; and solicit viewers to make contributions directly to a political committee. You agree, however, that these activities are entirely your own. Moreover, by engaging in these activities, you represent and warrant that you are eligible to engage in them under applicable law, and that you will abide by all relevant laws and regulations while doing so.

You agree not to solicit the use of or use any Twitch monetization tool (e.g., Bits or subscriptions) for the purpose of making or delivering a contribution to a candidate, candidate's committee, political action committee, ballot committee, or any other campaign committee, or otherwise for the purpose of influencing any election. Candidates for political office are not eligible to use any Twitch monetization tool on their channels.

9. Prohibited Conduct

YOU AGREE NOT TO violate any law, contract, intellectual property, or other third-party right; not to commit a tort, and that you are solely responsible for your conduct while on the Twitch Services.

You agree that you will comply with these Terms of Service and Twitch's Community Guidelines and will not:

i. create, upload, transmit, distribute, or store any content that is inaccurate, unlawful, infringing, defamatory, obscene, pornographic, invasive of privacy or publicity rights, harassing, threatening, abusive, inflammatory, or otherwise objectionable;

ii. impersonate any person or entity; falsely claim an affiliation with any person or entity; access the Twitch Services accounts of others without permission; forge another person's digital signature; misrepresent the source, identity, or content of information transmitted via the Twitch Services; or perform any other similar fraudulent activity;

iii. send junk mail or spam to users of the Twitch Services, including without limitation unsolicited advertising, promotional materials, or other solicitation material; bulk mailing of commercial advertising, chain mail, informational announcements, charity requests, petitions for signatures, or any of the preceding things related to promotional giveaways (such as raffles and contests); and other similar activities;

iv. harvest or collect email addresses or other contact information of other users from the Twitch Services;

v. defame, harass, abuse, threaten, or defraud users of the Twitch Services, or collect or attempt to collect, personal information about users or third parties without their consent;

vi. delete, remove, circumvent, disable, damage, or otherwise interfere with (a) security-related features of the Twitch Services or User Content, (b) features that prevent or restrict use or copying of any content accessible through the Twitch Services, (c) features that enforce limitations on the use of the Twitch Services or User Content, or (d) the copyright or other proprietary rights notices on the Twitch Services or User Content;

vii. reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code of the Twitch Services or any part thereof, except and only to the

extent that this activity is expressly permitted by the law of your jurisdiction of residence;

viii. modify, adapt, translate, or create derivative works based upon the Twitch Services or any part thereof, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation;

ix. interfere with or damage the operation of the Twitch Services or any user's enjoyment of them, by any means, including uploading or otherwise disseminating viruses, adware, spyware, worms, or other malicious code;

x. relay email from a third party's mail servers without the permission of that third party;

xi. access any website, server, software application, or other computer resource owned, used, and/or licensed by Twitch, including but not limited to the Twitch Services, by means of any robot, spider, scraper, crawler, or other automated means for any purpose, or bypass any measures Twitch may use to prevent or restrict access to any website, server, software application, or other computer resource owned, used, and/or licensed by Twitch, including but not limited to the Twitch Services;

xii. manipulate identifiers in order to disguise the origin of any User Content transmitted through the Twitch Services;

xiii. interfere with or disrupt the Twitch Services or servers or networks connected to the Twitch Services, or disobey any requirements, procedures, policies, or regulations of networks connected to the Twitch Services; use the Twitch Services in any manner that could interfere with, disrupt, negatively affect, or inhibit other users from fully enjoying the Twitch Services, or that could damage, disable, overburden, or impair the functioning of the Twitch Services in any manner;

xiv. use or attempt to use another user's account without authorization from that user and Twitch;

xv. attempt to circumvent any content filtering techniques we employ, or attempt to access any service or area of the Twitch Services that you are not authorized to access;

xvi. attempt to indicate in any manner, without our prior written permission, that you have a relationship with us or that we have endorsed you or any products or services for any purpose; and

xvii. use the Twitch Services for any illegal purpose, or in violation of any local, state, national, or international law or regulation, including without limitation laws governing intellectual property and other proprietary rights, data protection, and privacy.

To the extent permitted by applicable law, Twitch takes no responsibility and assumes no liability for any User Content or for any loss or damage resulting therefrom, nor is Twitch liable for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography, or profanity you may encounter when using the Twitch Services. Your use of the Twitch Services is at your own risk. In addition, these rules do not create any private right of action on the part of any third party or any reasonable expectation that the Twitch Services will not contain any content that is prohibited by such rules.

Twitch is not liable for any statements or representations included in User Content. Twitch does not endorse any User Content, opinion, recommendation, or advice expressed therein, and Twitch expressly disclaims any and all liability in connection with User Content. To the fullest extent permitted by applicable law, Twitch reserves the right to remove, screen, or edit any User Content posted or stored on the Twitch Services at any time and without notice, including where such User Content violates these Terms of Service or applicable law, and you are solely responsible for creating backup copies of and replacing any User Content you post or store on the Twitch Services at your sole cost and expense. Any use of the Twitch Services in violation of the foregoing violates these Terms of Service and may result in, among other things, termination or suspension of your rights to use the Twitch Services.

For Residents of the Republic of Korea, except in the case where Twitch reasonably considers that giving notice is legally prohibited (for instance, when providing notice would either (i) violate applicable laws, regulations, or orders from regulatory authorities or (ii) compromise an ongoing investigation conducted by a regulatory authority) or that any notice may cause harm to you, third parties, Twitch, and/or its affiliates (for instance, when providing notice harms the security of the Twitch Services), Twitch will without delay notify you of the reason for taking the relevant step.

10. Respecting Copyright

Twitch respects the intellectual property of others and follows the requirements set forth in the Digital Millennium Copyright Act (“DMCA”) and other applicable laws. If you are the copyright owner or agent thereof and believe that content

posted on the Twitch Services infringes upon your copyright, please submit a notice following our DMCA Guidelines, which include further information about our policies, what to include in your notice, and where to submit your notice.

11. Trademarks

TWITCH, the Twitch logos, and any other product or service name, logo, or slogan used by Twitch, and the look and feel of the Twitch Services, including all page headers, custom graphics, button icons, and scripts, are trademarks or trade dress of Twitch, and may not be used in whole or in part in connection with any product or service that is not Twitch's, in any manner that is likely to cause confusion among customers, or in any manner that disparages or discredits Twitch, without our prior written permission. Any use of these trademarks must be in accordance with the Twitch Trademark Guidelines.

All other trademarks referenced in the Twitch Services are the property of their respective owners. Reference on the Twitch Services to any products, services, processes, or other information by trade name, trademark, manufacturer, supplier, or otherwise does not constitute or imply endorsement, sponsorship, or recommendation thereof by us or any other affiliation.

12. Third-Party Content

In addition to the User Content, Twitch may provide other third-party content on the Twitch Services (collectively, the "Third-Party Content"). Twitch does not control or endorse any Third-Party Content and makes no representation or warranties of any kind regarding the Third-Party Content, including without limitation regarding its accuracy or completeness. Please be aware that we do not create Third-Party Content, update, or monitor it. Therefore we are not responsible for any Third-Party Content on the Twitch Services.

You are responsible for deciding if you want to access or use third-party websites or applications that link from the Twitch Services (the "Reference Sites"). Twitch does not control or endorse any such Reference Sites or the information, materials, products, or services contained on or accessible through Reference Sites, and makes no representations or warranties of any kind regarding the Reference Sites. In addition, your correspondence or business dealings with, or participation in promotions of, advertisers found on or through the Twitch Services are solely between you and such advertiser. Access and use of Reference Sites, including the information, materials, products, and services on or available through Reference Sites is solely at your own risk.

13. Idea Submission

By submitting ideas, suggestions, documents, and/or proposals (the "Submissions") to Twitch or its employees, you acknowledge and agree that Twitch shall be entitled to use or disclose such Submissions for any purpose in any way without providing compensation or credit to you.

14. Termination

To the fullest extent permitted by applicable law, Twitch reserves the right, without notice and in our sole discretion, to terminate your license to use the Twitch Services (including to post User Content) and to block or prevent your future access to and use of the Twitch Services, including where we reasonably consider that: (a) your use of the Twitch Services violates these Terms of Service or applicable law; (b) you fraudulently use or misuse the Twitch Services; or (c) we are unable to continue providing the Twitch Services to you due to technical or legitimate business reasons. Our right to terminate your license includes the ability to terminate or to suspend your access to any purchased products or services, including any subscriptions, Twitch Prime, or Turbo accounts. To the fullest extent permitted by applicable law, your only remedy with respect to any dissatisfaction with: (i) the Twitch Services, (ii) any term of these Terms of Service, (iii) any policy or practice of Twitch in operating the Twitch Services, or (iv) any content or information transmitted through the Twitch Services, is to terminate your account and to discontinue use of any and all parts of the Twitch Services.

For residents of the Republic of Korea, except in the case where Twitch reasonably considers that giving notice is legally prohibited (for instance, when providing notice would either (i) violate applicable laws, regulations, or orders from regulatory authorities or (ii) compromise an ongoing investigation conducted by a regulatory authority) or that any notice may cause harm to you, third parties, Twitch, and/or its affiliates (for instance, when providing notice harms the security of the Twitch Services), Twitch will without delay notify you of the reason for taking the relevant step.

15. Disputes

a. Indemnification

To the fullest extent permitted by applicable law, you agree to indemnify, defend, and hold harmless Twitch, its affiliated companies, and each of our respective contractors, employees, officers, directors, agents, third-party suppliers, licensors, and partners (individually and collectively, the "Twitch Parties") from any claims,

losses, damages, demands, expenses, costs, and liabilities, including legal fees and expenses, arising out of or related to your access, use, or misuse of the Twitch Services, any User Content you post, store, or otherwise transmit in or through the Twitch Services, your violation of the rights of any third party, any violation by you of these Terms of Service, or any breach of the representations, warranties, and covenants made by you herein. You agree to promptly notify the Twitch Parties of any third-party claim, and Twitch reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify Twitch, and you agree to cooperate with Twitch's defense of these claims. Twitch will use reasonable efforts to notify you of any such claim, action, or proceeding upon becoming aware of it.

b. Disclaimers; No Warranties

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW: (A) THE TWITCH SERVICES AND THE CONTENT AND MATERIALS CONTAINED THEREIN ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, EXCEPT AS EXPRESSLY PROVIDED TO THE CONTRARY IN WRITING BY TWITCH; (B) THE TWITCH PARTIES DISCLAIM ALL OTHER WARRANTIES, STATUTORY, EXPRESS, OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT AS TO THE TWITCH SERVICES, INCLUDING ANY INFORMATION, CONTENT, OR MATERIALS CONTAINED THEREIN; (C) TWITCH DOES NOT REPRESENT OR WARRANT THAT THE CONTENT OR MATERIALS ON THE TWITCH SERVICES ARE ACCURATE, COMPLETE, RELIABLE, CURRENT, OR ERROR-FREE; (D) TWITCH IS NOT RESPONSIBLE FOR TYPOGRAPHICAL ERRORS OR OMISSIONS RELATING TO TEXT OR PHOTOGRAPHY; AND (E) WHILE TWITCH ATTEMPTS TO MAKE YOUR ACCESS AND USE OF THE TWITCH SERVICES SAFE, TWITCH CANNOT AND DOES NOT REPRESENT OR WARRANT THAT THE TWITCH SERVICES OR OUR SERVER(S) ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, AND THEREFORE, YOU SHOULD USE INDUSTRY-RECOGNIZED SOFTWARE TO DETECT AND DISINFECT VIRUSES FROM ANY DOWNLOAD. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM TWITCH OR THROUGH THE TWITCH SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN.

c. Limitation of Liability and Damages

i. Limitation of Liability

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW: (A) IN NO EVENT SHALL TWITCH OR THE TWITCH PARTIES BE LIABLE FOR ANY DIRECT, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR ANY OTHER DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFITS, OR LOSS OF DATA, WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF OR INABILITY TO USE THE TWITCH SERVICES, THE CONTENT OR THE MATERIALS, INCLUDING WITHOUT LIMITATION ANY DAMAGES CAUSED BY OR RESULTING FROM RELIANCE ON ANY INFORMATION OBTAINED FROM TWITCH, OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR EMAIL, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT RESULTING FROM ACTS OF GOD, COMMUNICATIONS FAILURE, THEFT, DESTRUCTION, OR UNAUTHORIZED ACCESS TO TWITCH'S RECORDS, PROGRAMS, OR SERVICES; AND (B) IN NO EVENT SHALL THE AGGREGATE LIABILITY OF TWITCH, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE, OR IMPUTED), PRODUCT LIABILITY, STRICT LIABILITY, OR OTHER THEORY, ARISING OUT OF OR RELATING TO THE USE OF OR INABILITY TO USE THE TWITCH SERVICES EXCEED THE AMOUNT PAID BY YOU, IF ANY, FOR ACCESSING THE TWITCH SERVICES DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE CLAIM OR ONE HUNDRED DOLLARS, WHICHEVER IS GREATER. [1] TO THE EXTENT THAT APPLICABLE LAW PROHIBITS LIMITATION OF SUCH LIABILITY, TWITCH SHALL LIMIT ITS LIABILITY TO THE FULL EXTENT ALLOWED BY APPLICABLE LAW.

ii. Reference Sites

THESE LIMITATIONS OF LIABILITY ALSO APPLY WITH RESPECT TO DAMAGES INCURRED BY YOU BY REASON OF ANY PRODUCTS OR SERVICES SOLD OR PROVIDED ON ANY REFERENCE SITES OR OTHERWISE BY THIRD PARTIES OTHER THAN TWITCH AND RECEIVED THROUGH OR ADVERTISED ON THE TWITCH SERVICES OR RECEIVED THROUGH ANY REFERENCE SITES.

iii. Basis of the Bargain

YOU ACKNOWLEDGE AND AGREE THAT TWITCH HAS OFFERED THE TWITCH SERVICES, USER CONTENT, MATERIALS, AND OTHER CONTENT AND INFORMATION, SET ITS PRICES, AND ENTERED INTO THESE TERMS OF SERVICE IN RELIANCE UPON THE WARRANTY DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH HEREIN, THAT THE WARRANTY DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH HEREIN REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN YOU AND TWITCH, AND THAT THE WARRANTY DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH HEREIN FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN YOU AND TWITCH. TWITCH WOULD NOT BE ABLE TO PROVIDE THE TWITCH SERVICES TO YOU ON AN ECONOMICALLY REASONABLE BASIS WITHOUT THESE LIMITATIONS.

d. Applicable Law and Venue

(i) To the fullest extent permitted by applicable law, you and Twitch agree that if you are a Subscribing Organization or a consumer resident of a jurisdiction other than those in (ii) below, the following governing law and arbitration provision applies:

PLEASE READ THE FOLLOWING CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE DISPUTES WITH TWITCH AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM TWITCH.

You and Twitch agree to arbitrate any dispute arising from these Terms of Service or your use of the Twitch Services, except that you and Twitch are not required to arbitrate any dispute in which either party seeks equitable and other relief for the alleged unlawful use of copyrights, trademarks, trade names, logos, trade secrets, or patents. ARBITRATION PREVENTS YOU FROM SUING IN COURT OR FROM HAVING A JURY TRIAL. You and Twitch agree that you will notify each other in writing of any dispute within thirty (30) days of when it arises. Notice to Twitch shall be sent to: Twitch Interactive, Inc., Attn: Legal, 350 Bush Street, 2nd Floor, San Francisco, CA 94104. You and Twitch further agree: to attempt informal resolution prior to any demand for arbitration; that any arbitration will occur in Santa Clara County, California; that arbitration will be conducted confidentially by a single arbitrator in accordance with the rules of JAMS; and that the state or federal courts in Santa Clara County, California have exclusive jurisdiction over any appeals of an arbitration award and over any suit between the

parties not subject to arbitration. Other than class procedures and remedies discussed below, the arbitrator has the authority to grant any remedy that would otherwise be available in court. Any dispute between the parties will be governed by this Agreement and the laws of the State of California and applicable United States law, without giving effect to any conflict of laws principles that may provide for the application of the law of another jurisdiction. Whether the dispute is heard in arbitration or in court, you and Twitch will not commence against the other a class action, class arbitration, or other representative action or proceeding.

(ii) If you are a resident in any jurisdiction in which the provision in the section above is found to be unenforceable, then any disputes, claims, or causes of action arising out of or in connection with these Terms of Service will be governed by and construed under the laws of your jurisdiction of residence, and shall be resolved by competent civil courts within your jurisdiction of residence.

e. Claims

YOU AND TWITCH AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE TWITCH SERVICES MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

16. Miscellaneous

a. Waiver

If we fail to exercise or enforce any right or provision of these Terms of Service, it will not constitute a waiver of such right or provision. Any waiver of any provision of these Terms of Service will be effective only if in writing and signed by the relevant party.

b. Severability

If any provision of these Terms of Service is held to be unlawful, void, or for any reason unenforceable, then that provision will be limited or eliminated from these Terms of Service to the minimum extent necessary and will not affect the validity and enforceability of any remaining provisions.

c. Assignment

These Terms of Service, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Twitch without restriction.

Any assignment attempted to be made in violation of this Terms of Service shall be void.

d. Survival

Upon termination of these Terms of Service, any provision which, by its nature or express terms should survive, will survive such termination or expiration, including, but not limited to, Sections 7, 8, 11, 12, and 15-17.

e. Entire Agreement

The Terms of Service, which incorporate the Terms of Sale and the Community Guidelines, is the entire agreement between you and Twitch relating to the subject matter herein and will not be modified except by a writing signed by authorized representatives of both parties, or by a change to these Terms of Service made by Twitch as set forth in Section 6 above.

17. Requests for Information and How to Serve a Subpoena

All requests for information or documents related to potential, anticipated, or current legal proceedings, investigations, or disputes must be made using the appropriate level of legal process, and must be properly served on Twitch via the Corporation Service Company (CSC), Twitch's national registered agent. Please find below the California address for CSC (the CSC office in your jurisdiction may be located through the Secretary of State's website):

Twitch Interactive, Inc.

c/o Corporation Service Company

2710 Gateway Oaks Drive, Suite 150N

Sacramento, CA 95833

Please note that Twitch does not accept requests for information or documents, or service of process, via e-mail or fax and will not respond to such requests. All requests must include the information you may have that will help us identify the relevant records (particularly, the Twitch Service at issue, e.g., www.twitch.tv, and the username at issue, e.g., the Twitch username: http://www.twitch.tv/username), the specific information requested, and its relationship to your investigation. Please also note that limiting your request to the relevant records (e.g., a limited time period) will facilitate efficient processing of your request.

The Twitch Services are offered by Twitch Interactive, Inc., located at: 350 Bush Street, 2nd Floor, San Francisco, CA 94104 and email: help@twitch.tv. If you are a California resident, you may have this same information emailed to you by sending a letter to the foregoing address with your email address and a request for this information.

18. Specific Terms for Twitch Sings

Twitch Sings ("Twitch Sings"), which is part of the Twitch Services, is a free-to-play singing game and streamer tool. It allows anyone to sing rights-cleared music privately or live on their personal Twitch channel, and to create and share VODs with users of Twitch and other users of Twitch Sings. All game activity can be streamed to Twitch without any additional software.

Sing a song start to finish, perform a duet, or go live within a concert setting to hundreds of cheering fans. Bonus: if you use the Twitch Sings feature that allows you to live stream your performance to Twitch, emotes from chat will rise from the audience, while follows, cheers and subscription notices are highlighted with alerts and in-concert effects.

Before you stage dive on top of screaming fans, several guidelines:

- Sing the song lyrics as displayed in the app or, when song lyrics are not displayed, to the best of your knowledge;
- Avoid altering the fundamental character of any song included in Twitch Sings; and
- Behave (in rock parlance: don't trash the hotel room). Conduct yourself in accordance with the Community Guidelines and these Terms of Service.

To make available musical works from a variety of artists within Twitch Sings (from rock to pop), Twitch negotiated licenses with many different rights holders and continues to do so in order to add new musical tracks. The licenses granted to Twitch allow Twitch to use the works, and offer them to you for use, solely in connection with Twitch Sings and the Twitch Services. Twitch Sings content has not been cleared for use outside the Twitch Services. What this means is that, in your new rock-n-roll lifestyle, do not:

- make unauthorized use of the copyrighted elements of a Twitch Sings song (including the use of the story of a song in another creative work);

- assert copyright ownership of the songs (or any arrangements of the songs) provided in Twitch Sings; or
- use your performance from Twitch Sings outside the Twitch Services, with the exception that you can use the YouTube exporter tool offered on Twitch. However, you may not exercise any rights to claim or monetize any exported content, or block, dispute, interfere with, or suppress any attempts by a music rights holder (such as a music publisher who controls the song you recorded) to claim or monetize the exported content.

Doing any of the above may subject you to a notice of alleged infringement from rights holders and their agents.

Last, we want to alert you to the fact that music rights tend to evolve over time. Thus, we reserve the right to modify or remove certain songs or other content from Twitch Sings at any time (for example, as necessary to comply with our music licenses or with applicable laws). This may mean that Twitch will be required to take down previously recorded performances. Twitch takes no responsibility and assumes no liability in connection with your use of Twitch Sings.

Twitter
https://twitter.com/en/tos

If you live outside the European Union, EFTA States, or the United Kingdom, including if you live in the United States

These Terms of Service ("Terms") govern your access to and use of our services, including our various websites, SMS, APIs, email notifications, applications, buttons, widgets, ads, commerce services, and our other covered services (https://help.twitter.com/en/rules-and-policies/twitter-services-and-corporate-affiliates) that link to these Terms (collectively, the "Services"), and any information, text, links, graphics, photos, audio, videos, or other materials or arrangements of materials uploaded, downloaded or appearing on the Services (collectively referred to as "Content"). By using the Services you agree to be bound by these Terms.

1. Who May Use the Services

You may use the Services only if you agree to form a binding contract with Twitter and are not a person barred from receiving services under the laws of the applicable jurisdiction. In any case, you must be at least 13 years old, or in the case of Periscope 16 years old, to use the Services. If you are accepting these Terms and using the Services on behalf of a company, organization, government, or other legal entity, you represent and warrant that you are authorized to do so and have the authority to bind such entity to these Terms, in which case the words "you" and "your" as used in these Terms shall refer to such entity.

2. Privacy

Our Privacy Policy (https://www.twitter.com/privacy) describes how we handle the information you provide to us when you use our Services. You understand that through your use of the Services you consent to the collection and use (as set forth in the Privacy Policy) of this information, including the transfer of this information to the United States, Ireland, and/or other countries for storage, processing and use by Twitter and its affiliates.

3. Content on the Services

You are responsible for your use of the Services and for any Content you provide, including compliance with applicable laws, rules, and regulations. You should only provide Content that you are comfortable sharing with others.

Any use or reliance on any Content or materials posted via the Services or obtained by you through the Services is at your own risk. We do not endorse, support, represent or guarantee the completeness, truthfulness, accuracy, or reliability of any Content or communications posted via the Services or endorse any opinions expressed via the Services. You understand that by using the Services, you may be exposed to Content that might be offensive, harmful, inaccurate or otherwise inappropriate, or in some cases, postings that have been mislabeled or are otherwise deceptive. All Content is the sole responsibility of the person who originated such Content. We may not monitor or control the Content posted via the Services and, we cannot take responsibility for such Content.

We reserve the right to remove Content that violates the User Agreement, including for example, copyright or trademark violations or other intellectual property misappropriation, impersonation, unlawful conduct, or harassment. Information regarding specific policies and the process for reporting or appealing violations can be found in our Help Center (https://help.twitter.com/en/rules-and-policies/twitter-report-violation#specific-violations and https://help.twitter.com/en/managing-your-account/suspended-twitter-accounts).

If you believe that your Content has been copied in a way that constitutes copyright infringement, please report this by visiting our Copyright reporting form (https://help.twitter.com/forms/dmca) or contacting our designated copyright agent at:

Twitter, Inc.
Attn: Copyright Agent
1355 Market Street, Suite 900
San Francisco, CA 94103
Reports: https://help.twitter.com/forms/dmca
Email: copyright@twitter.com
(for content on Twitter)

Twitter, Inc.
Attn: Copyright Agent - Periscope

1355 Market Street, Suite 900
San Francisco, CA 94103
Reports: https://help.twitter.com/forms/dmca
Email: copyright@pscp.tv
(for content on Periscope)

Your Rights and Grant of Rights in the Content

You retain your rights to any Content you submit, post or display on or through the Services. What's yours is yours — you own your Content (and your incorporated audio, photos and videos are considered part of the Content).

By submitting, posting or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods now known or later developed (for clarity, these rights include, for example, curating, transforming, and translating). This license authorizes us to make your Content available to the rest of the world and to let others do the same. You agree that this license includes the right for Twitter to provide, promote, and improve the Services and to make Content submitted to or through the Services available to other companies, organizations or individuals for the syndication, broadcast, distribution, Retweet, promotion or publication of such Content on other media and services, subject to our terms and conditions for such Content use. Such additional uses by Twitter, or other companies, organizations or individuals, is made with no compensation paid to you with respect to the Content that you submit, post, transmit or otherwise make available through the Services as the use of the Services by you is hereby agreed as being sufficient compensation for the Content and grant of rights herein.

Twitter has an evolving set of rules for how ecosystem partners can interact with your Content on the Services. These rules exist to enable an open ecosystem with your rights in mind. You understand that we may modify or adapt your Content as it is distributed, syndicated, published, or broadcast by us and our partners and/or make changes to your Content in order to adapt the Content to different media.

You represent and warrant that you have, or have obtained, all rights, licenses, consents, permissions, power and/or authority necessary to grant the rights granted herein for any Content that you submit, post or display on or through the Services. You agree that such Content will not contain material subject to copyright or other

proprietary rights, unless you have necessary permission or are otherwise legally entitled to post the material and to grant Twitter the license described above.

4. Using the Services

Please review the Twitter Rules and Policies (and, for Periscope, the Periscope Community Guidelines at https://www.pscp.tv/content), which are part of the User Agreement and outline what is prohibited on the Services. You may use the Services only in compliance with these Terms and all applicable laws, rules and regulations.

Our Services evolve constantly. As such, the Services may change from time to time, at our discretion. We may stop (permanently or temporarily) providing the Services or any features within the Services to you or to users generally. We also retain the right to create limits on use and storage at our sole discretion at any time. We may also remove or refuse to distribute any Content on the Services, limit distribution or visibility of any Content on the service, suspend or terminate users, and reclaim usernames without liability to you.

In consideration for Twitter granting you access to and use of the Services, you agree that Twitter and its third-party providers and partners may place advertising on the Services or in connection with the display of Content or information from the Services whether submitted by you or others. You also agree not to misuse our Services, for example, by interfering with them or accessing them using a method other than the interface and the instructions that we provide. You may not do any of the following while accessing or using the Services: (i) access, tamper with, or use non-public areas of the Services, Twitter's computer systems, or the technical delivery systems of Twitter's providers; (ii) probe, scan, or test the vulnerability of any system or network or breach or circumvent any security or authentication measures; (iii) access or search or attempt to access or search the Services by any means (automated or otherwise) other than through our currently available, published interfaces that are provided by Twitter (and only pursuant to the applicable terms and conditions), unless you have been specifically allowed to do so in a separate agreement with Twitter (NOTE: crawling the Services is permissible if done in accordance with the provisions of the robots.txt file, however, scraping the Services without the prior consent of Twitter is expressly prohibited); (iv) forge any TCP/IP packet header or any part of the header information in any email or posting, or in any way use the Services to send altered, deceptive or false source-identifying information; or (v) interfere with, or disrupt,

(or attempt to do so), the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, mail-bombing the Services, or by scripting the creation of Content in such a manner as to interfere with or create an undue burden on the Services. We also reserve the right to access, read, preserve, and disclose any information as we reasonably believe is necessary to (i) satisfy any applicable law, regulation, legal process or governmental request, (ii) enforce the Terms, including investigation of potential violations hereof, (iii) detect, prevent, or otherwise address fraud, security or technical issues, (iv) respond to user support requests, or (v) protect the rights, property or safety of Twitter, its users and the public. Twitter does not disclose personally-identifying information to third parties except in accordance with our Privacy Policy.

If you use developer features of the Services, including but not limited to Twitter for Websites (https://developer.twitter.com/docs/twitter-for-websites/overview), Twitter Cards (https://developer.twitter.com/docs/tweets/optimize-with-cards/guides/getting-started), Public API (https://developer.twitter.com/en/docs), or Sign in with Twitter (https://developer.twitter.com/docs/basics/authentication/guides/log-in-with-twitter), you agree to our Developer Agreement (https://developer.twitter.com/en/developer-terms/agreement) and Developer Policy (https://developer.twitter.com/en/developer-terms/policy). If you want to reproduce, modify, create derivative works, distribute, sell, transfer, publicly display, publicly perform, transmit, or otherwise use the Services or Content on the Services, you must use the interfaces and instructions we provide, except as permitted through the Twitter Services, these Terms, or the terms provided on https://developer.twitter.com/en/developer-terms. If you are a security researcher, you are required to comply with the rules of the Twitter Vulnerability Reporting Program (https://hackerone.com/twitter). The requirements set out in the preceding paragraph may not apply to those participating in Twitter's Vulnerability Reporting Program.

If you use advertising features of the Services, you must agree to our Twitter Master Services Agreement (https://ads.twitter.com/terms).

If you use Super Hearts, Coins, or Stars on Periscope, you must agree to our Super Hearts Terms (https://legal.twitter.com/en/periscope/super/terms.html).

Your Account

You may need to create an account to use some of our Services. You are responsible for safeguarding your account, so use a strong password and limit its use to this account. We cannot and will not be liable for any loss or damage arising from your failure to comply with the above.

You can control most communications from the Services. We may need to provide you with certain communications, such as service announcements and administrative messages. These communications are considered part of the Services and your account, and you may not be able to opt-out from receiving them. If you added your phone number to your account and you later change or deactivate that phone number, you must update your account information to help prevent us from communicating with anyone who acquires your old number.

Your License to Use the Services

Twitter gives you a personal, worldwide, royalty-free, non-assignable and non-exclusive license to use the software provided to you as part of the Services. This license has the sole purpose of enabling you to use and enjoy the benefit of the Services as provided by Twitter, in the manner permitted by these Terms.

The Services are protected by copyright, trademark, and other laws of both the United States and other countries. Nothing in the Terms gives you a right to use the Twitter name or any of the Twitter trademarks, logos, domain names, other distinctive brand features, and other proprietary rights. All right, title, and interest in and to the Services (excluding Content provided by users) are and will remain the exclusive property of Twitter and its licensors. Any feedback, comments, or suggestions you may provide regarding Twitter, or the Services is entirely voluntary and we will be free to use such feedback, comments or suggestions as we see fit and without any obligation to you.

Ending These Terms

You may end your legal agreement with Twitter at any time by deactivating your accounts and discontinuing your use of the Services.
See https://help.twitter.com/en/managing-your-account/how-to-deactivate-twitter-account (and for Periscope, https://help.pscp.tv/customer/portal/articles/2460220) for instructions on how to deactivate your account and the Privacy Policy for more information on what happens to your information.

We may suspend or terminate your account or cease providing you with all or part of the Services at any time for any or no reason, including, but not limited to, if we reasonably believe: (i) you have violated these Terms or the Twitter Rules and

Policies or Periscope Community Guidelines, (ii) you create risk or possible legal exposure for us; (iii) your account should be removed due to unlawful conduct, (iv) your account should be removed due to prolonged inactivity; or (v) our provision of the Services to you is no longer commercially viable. We will make reasonable efforts to notify you by the email address associated with your account or the next time you attempt to access your account, depending on the circumstances. In all such cases, the Terms shall terminate, including, without limitation, your license to use the Services, except that the following sections shall continue to apply: II, III, V, and VI. If you believe your account was terminated in error you can file an appeal following the steps found in our Help Center (https://help.twitter.com/forms/general?subtopic=suspended). For the avoidance of doubt, these Terms survive the deactivation or termination of your account.

5. Disclaimers and Limitations of Liability

The Services are Available "AS-IS"

Your access to and use of the Services or any Content are at your own risk. You understand and agree that the Services are provided to you on an “AS IS” and “AS AVAILABLE” basis. The “Twitter Entities” refers to Twitter, its parents, affiliates, related companies, officers, directors, employees, agents, representatives, partners, and licensors. Without limiting the foregoing, to the maximum extent permitted under applicable law, THE TWITTER ENTITIES DISCLAIM ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. The Twitter Entities make no warranty or representation and disclaim all responsibility and liability for: (i) the completeness, accuracy, availability, timeliness, security or reliability of the Services or any Content; (ii) any harm to your computer system, loss of data, or other harm that results from your access to or use of the Services or any Content; (iii) the deletion of, or the failure to store or to transmit, any Content and other communications maintained by the Services; and (iv) whether the Services will meet your requirements or be available on an uninterrupted, secure, or error-free basis. No advice or information, whether oral or written, obtained from the Twitter Entities or through the Services, will create any warranty or representation not expressly made herein.

Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE TWITTER ENTITIES SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY LOSS OF PROFITS OR REVENUES, WHETHER INCURRED DIRECTLY OR INDIRECTLY, OR ANY LOSS OF DATA, USE, GOODWILL, OR OTHER INTANGIBLE LOSSES, RESULTING FROM (i) YOUR ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THE SERVICES; (ii) ANY CONDUCT OR CONTENT OF ANY THIRD PARTY ON THE SERVICES, INCLUDING WITHOUT LIMITATION, ANY DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD PARTIES; (iii) ANY CONTENT OBTAINED FROM THE SERVICES; OR (iv) UNAUTHORIZED ACCESS, USE OR ALTERATION OF YOUR TRANSMISSIONS OR CONTENT. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF THE TWITTER ENTITIES EXCEED THE GREATER OF ONE HUNDRED U.S. DOLLARS (U.S. $100.00) OR THE AMOUNT YOU PAID TWITTER, IF ANY, IN THE PAST SIX MONTHS FOR THE SERVICES GIVING RISE TO THE CLAIM. THE LIMITATIONS OF THIS SUBSECTION SHALL APPLY TO ANY THEORY OF LIABILITY, WHETHER BASED ON WARRANTY, CONTRACT, STATUTE, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, AND WHETHER OR NOT THE TWITTER ENTITIES HAVE BEEN INFORMED OF THE POSSIBILITY OF ANY SUCH DAMAGE, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

6. General

We may revise these Terms from time to time. The changes will not be retroactive, and the most current version of the Terms, which will always be at twitter.com/tos, will govern our relationship with you. We will try to notify you of material revisions, for example via a service notification or an email to the email associated with your account. By continuing to access or use the Services after those revisions become effective, you agree to be bound by the revised Terms.

The laws of the State of California, excluding its choice of law provisions, will govern these Terms and any dispute that arises between you and Twitter. All disputes related to these Terms or the Services will be brought solely in the federal or state courts located in San Francisco County, California, United States, and you consent to personal jurisdiction and waive any objection as to inconvenient forum.

If you are a federal, state, or local government entity in the United States using the Services in your official capacity and legally unable to accept the controlling law, jurisdiction or venue clauses above, then those clauses do not apply to you. For such U.S. federal government entities, these Terms and any action related thereto will be governed by the laws of the United States of America (without reference to conflict of laws) and, in the absence of federal law and to the extent permitted under federal law, the laws of the State of California (excluding choice of law).

In the event that any provision of these Terms is held to be invalid or unenforceable, then that provision will be limited or eliminated to the minimum extent necessary, and the remaining provisions of these Terms will remain in full force and effect. Twitter's failure to enforce any right or provision of these Terms will not be deemed a waiver of such right or provision.

These Terms are an agreement between you and Twitter, Inc., 1355 Market Street, Suite 900, San Francisco, CA 94103 U.S.A. If you have any questions about these Terms, please contact us.

Effective: June 18, 2020

Vimeo
https://vimeo.com/terms

Last Updated: May 21, 2020

This **Vimeo Terms of Service Agreement** (the "**Agreement**" or "**Terms of Service**") is made between Vimeo, Inc. ("**Vimeo**," "**we**," "**us**," or "**our**") and you, our customer ("**you**" or "**your**"). This Agreement governs your use of Vimeo owned-and-operated websites, applications, and embeddable video players (collectively, the "**Services**"). This includes our Vimeo, Vimeo OTT, and Livestream services. Your use of our Magisto, Chant, and Videofy services is governed exclusively by the Vimeo Creator Tools Terms of Service Agreement.

Notice: Section 11 of this Agreement contains a mandatory ARBITRATION AGREEMENT for certain privacy claims that you or Vimeo could assert. By using our Services and accepting this Agreement, you (1) agree to binding arbitration of these claims before a neutral arbitrator; and (2) waive your rights to go to court, have a jury hear your case, or participate as part of a class of plaintiffs with respect to such claims.

Content

12. General Provisions

1. Acceptance

By creating an account, viewing videos, making a purchase, downloading our software, or otherwise visiting or using our Services, you accept this Agreement and consent to contract with us electronically.

If you are an entity other than a natural person, the person who registers the account or otherwise uses our Services must have the authority to bind the entity. In this context, "you" means both the entity and each person who is authorized to access the account.

We may update this Agreement by posting a revised version on our website. By continuing to use our Services, you accept any revised Agreement.

This Agreement includes our Privacy Policy and the addenda listed in **Section 12** below. Please review our Privacy Policy to learn about the information we collect from you, how we use it, and with whom we share it.

2. Our Services

Service License: Subject to the terms hereof, we grant you access to our Services. This includes the right to:

- Stream videos that you have the right to view;
- Upload, store, and/or live stream videos, subject to your plan;
- Embed our embeddable video player on third-party websites; and
- Use all related functionality that we may provide.

Features: The features available to you will depend on your plan. We may change features from time to time. If you have a paid account, we commit to providing the core video hosting and streaming features of your plan (including the bandwidth and storage capabilities stated at the time of purchase) during your current service period.

Unlimited Bandwidth Fair Use Policy: We provide self-serve users with unlimited bandwidth for standard uses of our embeddable video player for all accounts that are below the 99th percentile of bandwidth usage.

If your account (or group of jointly-controlled accounts) is within the 99th percentile of bandwidth usage for self-serve accounts for any calendar month, then you must upgrade to an Enterprise plan. If you fail to do so, Vimeo may terminate your account upon ten (10) days' written notice. Subject to your compliance with this Agreement, you will be entitled to a pro-rata refund for the unused portion of the subscription term, if any.

We may restrict bandwidth or charge extra for the following uses of our player or video hosting tools (which should generally occur via our APIs (as defined below)): (1) plays on third-party sites without using our embeddable video player; (2) plays within third-party apps (e.g., mobile or connected TV apps); (3) plays when our player is connected to a third-party payment solution; or (4) plays when our player is connected to a third-party advertising solution.

Video Creation Tools: We may allow you to use Vimeo Create, our video creation tools. Your use of Vimeo Create is governed by our Vimeo Create Addendum.

Transactions: We may offer digital goods for sale. Purchases of Vimeo On Demand videos are governed by our Vimeo On Demand Viewer Agreement. Purchases of Vimeo Stock footage and licenses are governed by our Vimeo Stock License Agreement.

Monetization: We may allow you to sell digital goods or earn money through advertising. Your sales of videos are governed by our Seller Addendum.

Downloadable Software: We may offer applications for devices ("**Apps**") directly or through third-party stores. Subject to your compliance with these Terms of Service, Vimeo grants you a limited, non-exclusive, non-transferable, revocable license to download and use the Apps. We may update Apps from time to time to add new features and/or correct bugs. You shall ensure that you are using the most recent version of the App that is compatible with your device. We cannot guarantee that you will be able to use the most recent version of the App on your device. Apps offered through third-party stores are subject to our Third-Party Service Addendum.

Developer Tools: We may offer application programming interfaces ("**APIs**") that allow developers to build applications connected to our Services. Our APIs and related documentation are governed by our API License Addendum.

Enterprise Services: We may offer Services pursuant to an individually-negotiated agreement. Enterprise services are governed by our Enterprise Terms.

Third Parties: We may provide links to and integrations with websites or services operated by others. Your use of each such website or service is subject to its terms of service and our Third-Party Service Addendum.

3. Accounts

Registration: You may create an account to use certain features we offer (e.g., uploading or live streaming videos). To do so, you must provide an email address. By creating an account, you agree to receive notices from Vimeo at this email address.

Organizational Accounts: Corporate, governmental, and other organizational users must publicly display the legal name of their entity on their public account profile. If you are a government entity in the U.S., our Government Entity Addendum applies.

Age Requirements: You must be at least 16 years old or the applicable age of majority in your jurisdiction, whichever is greater, to create an account or otherwise use our Services. If you wish to use the Services for a commercial purpose, you must be at least 18 years old. Individuals under the applicable age may use our Services only through a parent or legal guardian's account and with their involvement. Please have that person read this Agreement with you and consent to it before proceeding.

Parents and Guardians: By granting your child permission to use the Services through your account, you agree and understand that you are responsible for monitoring and supervising your child's usage. If you believe your child is using your account and does not have your permission, please contact us immediately so that we can disable access.

Team Members: Certain subscription plans may allow you to grant other registered users ("**team members**") access to the account. Both you and each team member is deemed a party to this Agreement. You are responsible for the actions of your team members and must monitor their access and usage.

Account Security: You are responsible for all activity that occurs under your account, including unauthorized activity. You must safeguard the confidentiality of your account credentials. If you are using a computer that others have access to, you must log out of your account after each session. If you become aware of unauthorized access to your account, you must change your password and notify us immediately.

4. Subscription Plans

Plan Types: We offer free (Basic) memberships and paid subscriptions that allow you to upload and share video content. You may purchase a "**Self-Serve**" plan (you sign up and pay online) or an "**Enterprise**" plan (you work with a sales representative and execute an individualized agreement). Advertised prices and features may change.

Basic and Plus Accounts: Basic (free) members and Plus subscribers may not: (a) use the Services for commercial purposes unless they are film professionals or small film businesses; or (b) submit videos that they did not create or play a material part in creating.

Fees: You must pay all fees (plus any taxes) during your subscription period and any renewal periods. Our fees may include a fixed monthly or annual fee plus variable fees for transactions or usage.

Free trials and Discounts: We may offer free-trial or discounted subscriptions. When a free-trial period ends, your paid subscription begins (unless you have cancelled) and you must pay the full monthly or annual fee. If we provide a discount for the first subscription period, you must pay the discounted fee; in any renewal, you must pay the full fee.

Refund Policy: Subject to the terms hereof, Self-Serve subscribers who purchase plans directly from Vimeo may cancel and receive a full refund of their initial purchase within **thirty (30) days** after purchasing an annual plan and **five (5) days** after purchasing a monthly plan. Our refund policy does not apply to:

- In-app purchases;
- Fees charged immediately after a free-trial period ends;
- Subscription renewals or migrations to other plans;
- Fees other than annual or monthly subscription fees;
- Requests made after the specified periods;
- Customers who have breached this Agreement or whose accounts were terminated in accordance with our Copyright Policy;
- Customers who joined using a promotion that expressly disclaimed our refund policy;

- Customers who have initiated a chargeback dispute; or
- Enterprise plan customers.

Automatic Renewal: To the extent permitted by applicable law, subscriptions automatically renew at the end of each subscription period unless cancelled beforehand. Monthly plans renew for 30-day periods. Annual plans renew for one-year periods. You must pay the annual or monthly fee (plus any taxes) when each renewal period starts. Unused storage, bandwidth, and other usage limits do not roll over.

How to Decline Renewal: Self-Serve subscribers may opt out of automatic renewal by changing their account settings. Enterprise plan customers may opt out according to the Enterprise Terms**.** Any opt-out or notice of non-renewal will not affect the current subscription period. Vimeo may decline renewals.

Lapse Policy: When a subscription ends, the account will, at Vimeo's option, revert to Basic (free) account status or will be deleted. Any content in the account may be deleted to comply with the limitations of the new account status. You are responsible for archiving your content. Vimeo shall not be responsible for the loss of any content. We may publish additional guidelines regarding the treatment of lapsed subscriptions. These guidelines describe current practices only and shall not require Vimeo to provide any level of post-subscription account status.

In-App Purchase: We may allow you to purchase subscriptions within Apps. When you make such "in-app" purchases, you will be billed by the app platform, not us. **To turn off automatic renewal for subscriptions, access your platform's account settings (not Vimeo's).** Our refund policy does not apply to in-app purchases. Any billing inquiries should be directed to the app platform.

Resale: You may not sell, resell, rent, lease, or distribute any plan or any other aspect of our Services to any third party unless authorized by us in writing.

5. Acceptable Use Policy

We may allow you to upload, live stream, submit, or publish (collectively, to "**submit**") content such as videos, recordings, images, and text (collectively, "**content**"). You must ensure that your content, and your conduct, complies with the Acceptable Use Policy set forth in this **Section 5**. Vimeo may (but is not obligated to) monitor your account, content, and conduct, regardless of your privacy settings. Vimeo may take all appropriate actions to enforce its rights including removing specific videos or suspending or removing your account.

5.1 Copyright Policy

You may only upload content that you have the right to upload and share. Copyright owners may send Vimeo a takedown notice as stated in our Copyright Policy if they believe Vimeo is hosting infringing materials. We will, in appropriate circumstances, terminate the accounts of persons who repeatedly infringe.

5.2 Content Restrictions

You may not submit any content that:

- Infringes any third party's copyrights or other rights (e.g., trademark, privacy rights, etc.);
- Is sexually explicit (e.g., pornography) or proposes a transaction of a sexual nature;
- Is hateful, defamatory, or discriminatory or incites hatred against any individual or group;
- Promotes or supports terror or hate groups;
- Exploits minors;
- Depicts unlawful acts or extreme violence;
- Provides instructions on how to assemble explosive/incendiary devices or homemade/improvised firearms;
- Depicts animal cruelty or extreme violence towards animals;
- Promotes fraudulent or dubious business schemes or proposes an unlawful transaction;
- Makes false or misleading claims about vaccination safety;
- Conveys false or misleading health-related information that has a serious potential to cause public harm;
- Claims that mass tragedies are hoaxes or false flag operations;
- Depicts or encourages self-harm; or

- Violates any applicable law.

Please see the Vimeo Guidelines for guidance on how we interpret these terms.

5.3 Code of Conduct

In using our Services, you may not:

- Use an offensive screen name (e.g., explicit language) or avatar (e.g., containing nudity);
- Act in a deceptive manner or impersonate any person or organization;
- Harass or stalk any person;
- Harm or exploit minors;
- Distribute "spam" in any form or use misleading metadata;
- Collect personal information about others;
- Access another's account without permission;
- Engage in any unlawful activity;
- Embed our video player on or provide links to sites that contain content prohibited by **Section 5.2**; or
- Cause or encourage others to do any of the above.

5.4 Prohibited Technical Measures

You will not:

- Except as authorized by law or as permitted by us: scrape, reproduce, redistribute, create derivative works from, decompile, reverse engineer, alter, archive, or disassemble any part of our Services; or attempt to circumvent any of our security, rate-limiting, filtering, or digital rights management measures;
- Submit any malicious program, script, or code;
- Submit an unreasonable number of requests to our servers; or

- Take any other actions to manipulate, interfere with, or damage our Services.

5.5 Restricted Users

You may not create an account if you are a member of a terror or hate group. You may not purchase any goods or services from us if you reside in a country subject to a comprehensive U.S. sanctions program or are a Specifically Designated National (SDN) as designated by the U.S. Department of the Treasury.

5.6 Accessibility and Ratings

We provide means to allow you to include closed captioning in your videos. If required by applicable law, you must provide closed captioning in your videos.

We may allow you to filter videos based upon their user-defined content rating. We cannot guarantee that videos will be appropriately rated by others. You must rate your videos appropriately.

6. Licenses Granted by You

As between you and Vimeo, you own and will retain ownership of all intellectual property rights in and to the content you submit. In order to allow Vimeo to host and stream your content, you grant Vimeo the permissions set forth below.

6.1 Your Video Content

By submitting a video, you grant Vimeo permission to:

- Stream the video to end users;
- Embed the video on third-party websites;
- Distribute the video via our APIs;
- Make the video available for download;
- Transcode the video (create compressed versions of your video file that are optimized for streaming); and
- Generate stills (i.e., “thumbnails”) from your video to represent it (if you have not selected one).

If you have enabled a video privacy setting or disabled downloading or embedding, we will limit distribution of your video pursuant to your selection. By enabling access to your video to any third party, you grant each such person permission to stream (and/or download or embed, as applicable) your video. For the purposes of this **Section 6.1**, your video includes its title, description, tags, and other metadata.

The license period begins when you submit the video to Vimeo and ends when you or Vimeo delete it; *provided* that Vimeo may retain archival copies: (a) for a limited period of time in case you wish to restore it; (b) when the video is the subject of a takedown notice or other legal claim; or (c) when Vimeo in good faith believes that it is legally obligated to do so.

6.2 Vimeo Create Content

You may submit certain content to us for the purpose of creating a video using Vimeo Create. These submissions, and the resulting videos, are governed by our Vimeo Create Addendum.

6.3 Account Profile

You grant Vimeo permission to use your name, likeness, biography, trademarks, logos, or other identifiers used by you in your account profile for the purpose of displaying such properties to the public or the audiences you have specified. You may revoke the foregoing permission by deleting your account. Vimeo shall have the right to identify public profiles in its marketing and investor materials.

6.4 Other Content; Feedback

Content that is not covered by the licenses set forth in **Sections 6.1**, **6.2**, or **6.3** shall be governed by this **Section 6.4** (e.g., text you submit in comments). You grant Vimeo a perpetual and irrevocable right and license to copy, transmit, distribute, publicly perform, and display such content through online means in connection with our Services. If you make suggestions to Vimeo on improving our products or services, Vimeo may use your suggestions without any compensation to you.

6.5 Scope of Licenses

All licenses granted by you in this **Section 6**: (a) are non-exclusive, worldwide, and royalty-free; (b) include the right and license to copy, use, distribute, publicly perform, and display the licensed work for the purposes stated above; and (c) include all necessary rights and licenses to allow us to exercise our rights and

perform our obligations. By granting these licenses, you waive any so-called "moral rights" that you may have. Nothing in this Agreement shall be deemed a license "condition" applicable to Vimeo; rather, any breach of a term by Vimeo hereof shall give rise to, at most, a claim for breach of contract only. All licenses granted herein are in addition to any other licenses that you may grant (e.g., a Creative Commons license).

7. Your Obligations

7.1 Representations and Warranties

For each piece of content that you submit to or through Vimeo, you represent and warrant that:

- You have the right to submit the content to Vimeo and grant the licenses herein;
- Vimeo will not need to obtain licenses from any third party or pay royalties to any third party with respect to the streaming or other permitted distribution of the content;
- You have obtained appropriate releases (if necessary) from all persons who appear in the content;
- The content does not, and will not, infringe any third party's rights, including intellectual property rights, rights of publicity, moral rights, and privacy rights; and
- The content complies with this Agreement and all applicable laws.

7.2 Indemnification

You will indemnify, defend, and hold harmless Vimeo and its subsidiaries, parents, and affiliates, and their and our respective directors, officers, employees, and agents, from and against all third-party complaints, demands, claims, damages, losses, costs, liabilities, and expenses, including attorney's fees, arising from or relating to: (a) the content you submit to or through the Services; and (b) allegations of actions or omissions by you that (regardless if proven) would constitute a breach of this Agreement.

8. Term and Termination

This Agreement begins when you first use our Services and continues so long as you use our Service or have an account with us, whichever is longer. Paid accounts will continue for the subscription period and will renew in accordance with **Section 4** above. With respect to users who do not have a subscription plan, Vimeo may terminate this Agreement at any time by providing thirty (30) days' written notice, and users may terminate at any time by deleting their accounts.

If you breach this Agreement, Vimeo may, at its option: (a) terminate this Agreement immediately, with or without advance written notice; (b) suspend, delete, or limit access to your account or any content within it; and (c) to the extent permitted by applicable law, retain any amounts payable to you (which you forfeit). If Vimeo deletes your account for breach, you may not re-register.

In the event of any termination or expiration, the following sections will survive: **Section 6.4** (Other Content; Feedback), **Section 7.2** (Indemnification), **Section 9** (Disclaimers), **Section 10** (Limitation of Liability), **Section 11** (Disputes, Arbitration, and Choice of Law), and **Section 12** (General Provisions).

9. Disclaimers

VIMEO PROVIDES THE SERVICES ON AN "AS IS" AND "AS AVAILABLE" BASIS. YOU USE THE SERVICES AT YOUR OWN RISK. You must provide your own device and internet access.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, VIMEO DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. Among other things, Vimeo makes no representations or warranties:

- That our Services, or any part thereof, will be available or permitted in your jurisdiction, uninterrupted or error-free, completely secure, or accessible from all devices or browsers;
- Concerning any content submitted by or actions of our users;
- That any geo-filtering or digital rights management solution that we might offer will be effective;
- That our Services will meet your business or professional needs;

- That we will continue to support any particular feature or maintain backwards compatibility with any third-party software or device; or
- Concerning any third-party websites and resources.

10. Limitation of Liability

TO THE EXTENT PERMITTED BY APPLICABLE LAW: (A) VIMEO SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING DAMAGES FOR LOSS OF BUSINESS, PROFITS, GOODWILL, DATA, OR OTHER INTANGIBLE LOSSES, EVEN IF VIMEO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (B) VIMEO'S TOTAL LIABILITY TO YOU, EXCEPT FOR VIMEO'S CONTRACTUAL PAYMENT OBLIGATIONS HEREUNDER (IF ANY), SHALL NOT EXCEED THE AMOUNTS PAID BY YOU TO VIMEO OVER THE TWELVE (12) MONTHS PRECEDING YOUR CLAIM(S) OR ONE HUNDRED DOLLARS (USD $100), WHICHEVER IS GREATER.

11. Disputes, Arbitration, and Choice of Law

If you are dissatisfied with our Services for any reason, please contact us first so that we can try to resolve your concerns without the need for outside assistance.

11.1 Choice of Law

Any disputes relating to this Agreement or your use of our Services will be governed by the laws of New York State and the United States of America (with respect to matters subject to federal jurisdiction such as copyright), without regard to principles of conflicts of law. The arbitration agreement set forth in **Section 11.3** will be governed by the Federal Arbitration Act.

11.2 Choice of Venue for Litigation; Jury Trial Waiver

Except for matters that must be arbitrated (as set forth below), you and Vimeo agree that any action relating to this Agreement or your use of our Services must be commenced in the state or federal courts located in New York County, New York State, United States of America; you consent to the exclusive jurisdiction of those courts. IN ANY SUCH ACTION, VIMEO AND YOU IRREVOCABLY WAIVE ANY RIGHT TO A TRIAL BY JURY.

11.3 Arbitration of Privacy Claims; Class Action Waiver

The exclusive means of resolving any Covered Privacy Claim (defined below) shall be BINDING ARBITRATION. The arbitration will be administered by JAMS under the JAMS Streamlined Arbitration Rules & Procedures, as modified by our Arbitration Procedures. If you are a consumer, as defined by JAMS in its Consumer Minimum Standards, you may request that the arbitration hearing be conducted in the area in which you reside. Otherwise, the hearing (if any) shall take place in New York County, New York State, United States of America. EACH PARTY WAIVES ITS RIGHT TO GO TO COURT, TO A TRIAL BY JURY, AND TO PARTICIPATE IN A CLASS ACTION, CLASS ARBITRATION, OR OTHER REPRESENTATIVE PROCEEDING WITH RESPECT TO ANY COVERED PRIVACY CLAIM.

Overview: Arbitration provides a private dispute resolution process that is usually more streamlined and less formal than litigation. In an arbitration, your rights will be determined by a neutral third party called an arbitrator, and not a judge or jury. Both you and Vimeo are entitled to fundamentally fair proceedings at every stage of the arbitration, including the hearing. The arbitrator will decide all issues relating to the dispute, including the question of arbitrability, and can grant any relief that a court could grant. Decisions by the arbitrator are enforceable in court and may be overturned by a court only for very limited reasons. For details on the arbitration process, see our Arbitration Procedures.

Definitions: A "**Covered Privacy Claim**" means any dispute or claim arising out of or relating to (a) Vimeo's collection, use, storage, analysis, or transfer of your Personal Information; (b) an alleged breach of our Privacy Policy; (c) an alleged data breach or unauthorized disclosure of data or content; or (d) an allegation that Vimeo failed to comply with any privacy or data security right or obligation. "**Personal Information**" means any information about you, including your registration information (e.g., email address), payment information, location information, device information, biometric identifiers or information, IP address, and your activities (including viewing and search history), but does not include content that you upload (except to the extent the content contains personal information about you).

Small Claims Court Exception: Notwithstanding the above, each party has the right to bring an individual Covered Privacy Claim against the other in a small claims court of competent jurisdiction pursuant to Rule 1 of JAMS' Minimum Consumer Standards. If one party files an arbitration that could be litigated in such a small claims court, the responding party may request that the dispute proceed in small claims court. If the responding party requests to proceed in small claims court before the appointment of the arbitrator, the arbitration shall be

administratively closed. If requested after the appointment of the arbitrator, the arbitrator shall administratively close the arbitration so long as the proceedings are at an early stage and no hearing has occurred.

12. General Provisions

Reservation of Rights, Severability: Vimeo reserves all rights not expressly granted herein. Vimeo's rights and remedies are cumulative. No failure or delay by Vimeo in exercising any right will waive any further exercise of that right. If any term of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, that term will be limited or severed.

Force Majeure: Vimeo will not be liable for any delay or failure caused by (a) acts of God/natural disasters (including hurricanes and earthquakes); (b) disease, epidemic, or pandemic; (c) terrorist attack, civil war, civil commotion or riots, armed conflict, sanctions or embargoes; (d) nuclear, chemical, or biological contamination; (e) collapse of buildings, fire, explosion, or accident; (f) labor or trade strikes; (g) interruption, loss, or malfunction of a utility, transportation, or telecommunications service; (h) any order by a government or public authority, including a quarantine, travel restriction, or other prohibition; or (i) any other circumstance not within Vimeo's reasonable control, whether or not foreseeable (each a "**force majeure event**"). In the event of a force majeure event, Vimeo shall be relieved from full performance of the contractual obligation until the event passes or no longer prevents performance.

Relationship: You and Vimeo are independent contractors of one another; neither party is an agent, partner, or joint venturer of the other. This Agreement binds the parties and their successors, personal representatives, and permitted assigns. You may not assign this Agreement to any person whose account has been terminated by Vimeo or who is prohibited from registering; any such assignment will be void. Except as expressly stated herein, nothing in this Agreement confers any right on any third party.

Entire Agreement: This Agreement constitutes the entire understanding of the parties and supersedes all prior understandings regarding the subject matter hereof and may not be modified except in accordance with **Section 1** or in a document executed by authorized representatives of Vimeo. If you have a signed agreement with Vimeo, any conflicting term of that agreement will prevail over the terms hereof, but only as to the subject matter of that agreement.

The English version of this Agreement shall control. For convenience, we may provide translated versions of this Agreement.

Addenda: This Agreement incorporates the following documents (and no others) by reference:

- Privacy Policy
- Cookie Policy
- Copyright Policy
- Government Entity Addendum
- Third-Party Service Addendum
- Vimeo Create Addendum
- Vimeo On Demand Viewer Agreement
- Stock Footage License Agreement
- Seller Addendum
- API License Addendum
- Arbitration Procedures
- Enterprise Terms

Notices: You must send any notices of a legal nature to us by email or at:

Vimeo, Inc.
Attention: Legal Department
555 West 18th Street
New York, New York 10011

WhatsApp

https://www.whatsapp.com/legal/

Key Updates

Respect for your privacy is coded into our DNA. Since we started WhatsApp, we've built our Services with a set of strong privacy principles in mind. In our updated Terms and Privacy Policy you'll find:

- Information that is easier to understand. Our updated Terms and Privacy Policy are easier to understand and reflect new features such as WhatsApp Calling and WhatsApp for web and desktop.

- We joined Facebook in 2014. WhatsApp is now part of the Facebook family of companies. Our Privacy Policy explains how we work together to improve our services and offerings, like fighting spam across apps, making product suggestions, and showing relevant offers and ads on Facebook. Nothing you share on WhatsApp, including your messages, photos, and account information, will be shared onto Facebook or any of our other family of apps for others to see, and nothing you post on those apps will be shared on WhatsApp for others to see.

- Your messages are yours, and we can't read them. We've built privacy, end-to-end encryption, and other security features into WhatsApp. We don't store your messages once they've been delivered. When they are end-to-end encrypted, we and third parties can't read them.

- No third-party banner ads. We still do not allow third-party banner ads on WhatsApp.

- New ways to use WhatsApp. We will explore ways for you and businesses to communicate with each other using WhatsApp, such as through order, transaction, and appointment information, delivery and shipping notifications, product and service updates, and marketing. For example, you may receive flight status information for upcoming travel, a receipt for something you purchased, or a notification when a delivery will be made. Messages you may receive containing marketing could include an offer for something that might interest you. We do not want you to have a spammy experience; as with all of your messages, you can manage these communications, and we will honor the choices you make.

- The choices you have. If you are an existing user, you can choose not to have your WhatsApp account information shared with Facebook to improve your Facebook ads and products experiences. Existing users who accept our updated Terms and Privacy Policy will have an additional 30 days to make this choice by going to Settings > Account.

WhatsApp Terms Of Service

Last modified: January 28, 2020 (archived versions)

WhatsApp Inc. (“WhatsApp,” “our,” “we,” or “us”) provides messaging, Internet calling, and other services to users around the world. Please read our Terms of Service so you understand what’s up with your use of WhatsApp. You agree to our Terms of Service (“Terms”) by installing, accessing, or using our apps, services, features, software, or website (together, “Services”).

NO ACCESS TO EMERGENCY SERVICES: There are important differences between WhatsApp and your mobile and fixed-line telephone and SMS services. Our Services do not provide access to emergency services or emergency services providers, including the police, fire departments, or hospitals, or otherwise connect to public safety answering points. You should ensure you can contact your relevant emergency services providers through a mobile, fixed-line telephone, or other service.

IF YOU ARE A WHATSAPP USER LOCATED IN THE UNITED STATES OR CANADA, OUR TERMS CONTAIN A BINDING ARBITRATION PROVISION, WHICH STATES THAT, EXCEPT IF YOU OPT OUT AND EXCEPT FOR CERTAIN TYPES OF DISPUTES, WHATSAPP AND YOU AGREE TO RESOLVE ALL DISPUTES THROUGH BINDING INDIVIDUAL ARBITRATION, WHICH MEANS THAT YOU WAIVE ANY RIGHT TO HAVE THOSE DISPUTES DECIDED BY A JUDGE OR JURY, AND THAT YOU WAIVE YOUR RIGHT TO PARTICIPATE IN CLASS ACTIONS, CLASS ARBITRATIONS, OR REPRESENTATIVE ACTIONS. PLEASE READ THE “SPECIAL ARBITRATION PROVISION FOR UNITED STATES OR CANADA USERS” SECTION BELOW TO LEARN MORE.

About our services

Registration. You must register for our Services using accurate data, provide your current mobile phone number, and, if you change it, update this mobile phone number using our in-app change number feature. You agree to receive text messages and phone calls (from us or our third-party providers) with codes to register for our Services.

Address Book. You provide us the phone numbers of WhatsApp users and your other contacts in your mobile phone address book on a regular basis. You confirm you are authorized to provide us such numbers to allow us to provide our Services.

Age. You must be at least 13 years old to use our Services (or such greater age required in your country for you to be authorized to use our Services without parental approval). In addition to being of the minimum required age to use our Services under applicable law, if you are not old enough to have authority to agree to our Terms in your country, your parent or guardian must agree to our Terms on your behalf.

Devices and Software. You must provide certain devices, software, and data connections to use our Services, which we otherwise do not supply. For as long as you use our Services, you consent to downloading and installing updates to our Services, including automatically.

Fees and Taxes. You are responsible for all carrier data plan and other fees and taxes associated with your use of our Services. We may charge you for our Services, including applicable taxes.

We may refuse or cancel orders. We do not provide refunds for our Services, except as required by law.

Privacy policy and user data

WhatsApp cares about your privacy. WhatsApp's Privacy Policy describes our information (including message) practices, including the types of information we receive and collect from you and how we use and share this information. You agree to our data practices, including the collection, use, processing, and sharing of your information as described in our Privacy Policy, as well as the transfer and processing of your information to the United States and other countries globally where we have or use facilities, service providers, or partners, regardless of where you use our Services. You acknowledge that the laws, regulations, and standards of the country in which your information is stored or processed may be different from those of your own country.

Acceptable use of our services

Our Terms and Policies. You must use our Services according to our Terms and posted policies. If we disable your account for a violation of our Terms, you will not create another account without our permission.

Legal and Acceptable Use. You must access and use our Services only for legal, authorized, and acceptable purposes. You will not use (or assist others in using) our Services in ways that: (a) violate, misappropriate, or infringe the rights of WhatsApp, our users, or others, including privacy, publicity, intellectual property, or other proprietary rights; (b) are illegal, obscene, defamatory, threatening, intimidating, harassing, hateful, racially, or ethnically offensive, or instigate or encourage conduct that would be illegal, or otherwise inappropriate, including promoting violent crimes; (c) involve publishing falsehoods, misrepresentations, or misleading statements; (d) impersonate someone; (e) involve sending illegal or impermissible communications such as bulk messaging, auto-messaging, auto-dialing, and the like; or (f) involve any non-personal use of our Services unless otherwise authorized by us.

Harm to WhatsApp or Our Users. You must not (or assist others to) access, use, copy, adapt, modify, prepare derivative works based upon, distribute, license, sublicense, transfer, display, perform, or otherwise exploit our Services in impermissible or unauthorized manners, or in ways that burden, impair, or harm us, our Services, systems, our users, or others, including that you must not directly or through automated means: (a) reverse engineer, alter, modify, create derivative works from, decompile, or extract code from our Services; (b) send, store, or transmit viruses or other harmful computer code through or onto our Services; (c) gain or attempt to gain unauthorized access to our Services or systems; (d) interfere with or disrupt the integrity or performance of our Services; (e) create accounts for our Services through unauthorized or automated means; (f) collect the information of or about our users in any impermissible or unauthorized manner; (g) sell, resell, rent, or charge for our Services; or (h) distribute or make our Services available over a network where they could be used by multiple devices at the same time.

Keeping Your Account Secure. You are responsible for keeping your device and your WhatsApp account safe and secure, and you must notify us promptly of any unauthorized use or security breach of your account or our Services.

Third-party services

Our Services may allow you to access, use, or interact with third-party websites, apps, content, and other products and services. For example, you may choose to use third-party data backup services (such as iCloud or Google Drive) that are integrated with our Services or interact with a share button on a third party's website that enables you to send information to your WhatsApp contacts. Please note that when you use third-party services, their own terms and privacy policies will govern your use of those services.

Licenses

Your Rights. WhatsApp does not claim ownership of the information that you submit for your WhatsApp account or through our Services. You must have the necessary rights to such information that you submit for your WhatsApp account or through our Services and the right to grant the rights and licenses in our Terms.

WhatsApp's Rights. We own all copyrights, trademarks, domains, logos, trade dress, trade secrets, patents, and other intellectual property rights associated with our Services. You may not use our copyrights, trademarks, domains, logos, trade dress, patents, and other intellectual property rights unless you have our express permission and except in accordance with our Brand Guidelines. You may use the trademarks www.facebookbrand.com/trademarks of our affiliated companies only with their permission, including as authorized in any published brand guidelines.

Your License to WhatsApp. In order to operate and provide our Services, you grant WhatsApp a worldwide, non-exclusive, royalty-free, sublicensable, and transferable license to use, reproduce, distribute, create derivative works of, display, and perform the information (including the content) that you upload, submit, store, send, or receive on or through our Services. The rights you grant in this license are for the limited purpose of operating and providing our Services (such as to allow us to display your profile picture and status message, transmit your messages, store your undelivered messages on our servers for up to 30 days as we try to deliver them, and otherwise as described in our Privacy Policy).

WhatsApp's License to You. We grant you a limited, revocable, non-exclusive, non-sublicensable, and non-transferable license to use our Services, subject to and in accordance with our Terms. This license is for the sole purpose of enabling you to use our Services, in the manner permitted by our Terms. No licenses or rights are granted to you by implication or otherwise, except for the licenses and rights expressly granted to you.

Reporting third-party copyright, trademark, and other intellectual property infringement

To report claims of third-party copyright, trademark, or other intellectual property infringement, please visit our Intellectual Property Policy. We may terminate your WhatsApp account if you repeatedly infringe the intellectual property rights of others.

Disclaimers

YOU USE OUR SERVICES AT YOUR OWN RISK AND SUBJECT TO THE FOLLOWING DISCLAIMERS. WE ARE PROVIDING OUR SERVICES ON AN "AS IS" BASIS WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND FREEDOM FROM COMPUTER VIRUS OR OTHER HARMFUL CODE. WE DO NOT WARRANT THAT ANY INFORMATION PROVIDED BY US IS ACCURATE, COMPLETE, OR USEFUL, THAT OUR SERVICES WILL BE OPERATIONAL, ERROR FREE, SECURE, OR SAFE, OR THAT OUR SERVICES WILL FUNCTION WITHOUT DISRUPTIONS, DELAYS, OR IMPERFECTIONS. WE DO NOT CONTROL, AND ARE NOT RESPONSIBLE FOR, CONTROLLING HOW OR WHEN OUR USERS USE OUR SERVICES OR THE FEATURES, SERVICES, AND INTERFACES OUR SERVICES PROVIDE. WE ARE NOT RESPONSIBLE FOR AND ARE NOT OBLIGATED TO CONTROL THE ACTIONS OR INFORMATION (INCLUDING CONTENT) OF OUR USERS OR OTHER THIRD PARTIES. YOU RELEASE US, OUR SUBSIDIARIES, AFFILIATES, AND OUR AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, PARTNERS, AND AGENTS (TOGETHER, THE "WHATSAPP PARTIES") FROM ANY CLAIM, COMPLAINT, CAUSE OF ACTION, CONTROVERSY, OR DISPUTE (TOGETHER, "CLAIM") AND DAMAGES, KNOWN AND UNKNOWN, RELATING TO, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH ANY SUCH CLAIM YOU HAVE AGAINST ANY THIRD PARTIES. YOU WAIVE ANY RIGHTS YOU MAY HAVE UNDER CALIFORNIA CIVIL CODE §1542, OR ANY OTHER SIMILAR APPLICABLE STATUTE OR LAW OF ANY OTHER JURISDICTION, WHICH SAYS THAT: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Limitation of liability

THE WHATSAPP PARTIES WILL NOT BE LIABLE TO YOU FOR ANY LOST PROFITS OR CONSEQUENTIAL, SPECIAL, PUNITIVE, INDIRECT, OR INCIDENTAL DAMAGES RELATING TO, ARISING OUT OF, OR IN ANY WAY IN CONNECTION WITH OUR TERMS, US, OR OUR SERVICES, EVEN IF THE WHATSAPP PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. OUR AGGREGATE LIABILITY RELATING TO, ARISING OUT OF, OR IN ANY WAY IN CONNECTION WITH OUR TERMS, US, OR OUR SERVICES WILL NOT EXCEED THE GREATER OF ONE HUNDRED DOLLARS ($100) OR THE AMOUNT YOU HAVE PAID US IN THE PAST TWELVE MONTHS. THE FOREGOING DISCLAIMER OF CERTAIN DAMAGES AND LIMITATION OF LIABILITY WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE LAWS OF SOME STATES OR JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO SOME OR ALL OF THE EXCLUSIONS AND LIMITATIONS SET FORTH ABOVE MAY NOT APPLY TO YOU. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN OUR TERMS, IN SUCH CASES, THE LIABILITY OF THE WHATSAPP PARTIES WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

Indemnification

You agree to defend, indemnify, and hold harmless the WhatsApp Parties from and against all liabilities, damages, losses, and expenses of any kind (including reasonable legal fees and costs) relating to, arising out of, or in any way in connection with any of the following: (a) your access to or use of our Services, including information provided in connection therewith; (b) your breach or alleged breach of our Terms; or (c) any misrepresentation made by you. You will cooperate as fully as required by us in the defense or settlement of any Claim.

Dispute resolution

Forum and Venue. If you are a WhatsApp user located in the United States or Canada, the "Special Arbitration Provision for United States or Canada Users" section below applies to you. Please also read that section carefully and completely. If you are not subject to the "Special Arbitration Provision for United States or Canada Users" section below, you agree that you and WhatsApp will resolve any Claim relating to, arising out of, or in any way in connection with our Terms, us, or our Services (each, a "Dispute," and together, "Disputes") exclusively in the United States District Court for the Northern District of California or a state court located in San Mateo County in California, and you agree to submit to the personal jurisdiction of such courts for the purpose of litigating all such Disputes. Without prejudice to the foregoing, you agree that, in our sole discretion, we may elect to resolve any Dispute we have with you in any competent court in the country in which you reside that has jurisdiction over the Dispute.

Governing Law. The laws of the State of California govern our Terms, as well as any Disputes, whether in court or arbitration, which might arise between WhatsApp and you, without regard to conflict of law provisions.

Availability and termination of our services

Availability of Our Services. Our Services may be interrupted, including for maintenance, repairs, upgrades, or network or equipment failures. We may discontinue some or all of our Services, including certain features and the support for certain devices and platforms, at any time. Events beyond our control may affect our Services, such as events in nature and other force majeure events.

Termination. We may modify, suspend, or terminate your access to or use of our Services anytime for any reason, such as if you violate the letter or spirit of our Terms or create harm, risk, or possible legal exposure for us, our users, or others. The following provisions will survive any termination of your relationship with WhatsApp: "Licenses," "Disclaimers," "Limitation of Liability," "Indemnification," "Dispute Resolution," "Availability and Termination of our Services," "Other," and "Special Arbitration Provision for United States or Canada Users."

Other

- Unless a mutually executed agreement between you and us states otherwise, our Terms make up the entire agreement between you and us regarding WhatsApp and our Services, and supersede any prior agreements.

- We may ask you to agree to additional terms for certain of our Services in the future, which will govern to the extent there is a conflict between our Terms and such additional terms.

- Our Services are not intended for distribution to or use in any country where such distribution or use would violate local law or would subject us to any regulations in another country. We reserve the right to limit our Services in any country.

- You will comply with all applicable U.S. and non-U.S. export control and trade sanctions laws ("Export Laws"). You will not, directly or indirectly, export, re-export, provide, or otherwise transfer our Services: (a) to any individual, entity, or country prohibited by Export Laws; (b) to anyone on U.S. or non-U.S. government restricted parties lists; or (c) for any purpose prohibited by Export Laws, including nuclear, chemical, or biological weapons, or missile technology applications without the required government authorizations. You will not use or download our Services if you are located in a restricted country, if you are currently listed on any U.S. or non-U.S. restricted parties list, or for any purpose prohibited by Export Laws, and you will not disguise your location through IP proxying or other methods.

- Our Terms are written in English (U.S.). Any translated version is provided solely for your convenience. To the extent any translated version of our Terms conflicts with the English version, the English version controls.

- Any amendment to or waiver of our Terms requires our express consent.

- We may amend or update these Terms. We will provide you notice of amendments to our Terms, as appropriate, and update the "Last Modified" date at the top of our Terms. Your continued use of our Services confirms your acceptance of our Terms, as amended. If you do not agree to our Terms, as amended, you must stop using our Services. Please review our Terms from time to time.

- All of our rights and obligations under our Terms are freely assignable by us to any of our affiliates or in connection with a merger, acquisition, restructuring, or sale of assets, or by operation of law or otherwise, and we may transfer your information to any of our affiliates, successor entities, or new owner.

- You will not transfer any of your rights or obligations under our Terms to anyone else without our prior written consent.

- Nothing in our Terms will prevent us from complying with the law.

- Except as contemplated herein, our Terms do not give any third-party beneficiary rights.

- If we fail to enforce any of our Terms, it will not be considered a waiver.

- If any provision of these Terms is deemed unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from our Terms and shall not affect the validity and enforceability of the remaining provisions, except as set forth

in the “Special Arbitration Provision for United States or Canada Users” — “Severability” section below.

- We reserve all rights not expressly granted by us to you. In certain jurisdictions, you may have legal rights as a consumer, and our Terms are not intended to limit such consumer legal rights that may not be waived by contract.

- We always appreciate your feedback or other suggestions about WhatsApp and our Services, but you understand that we may use your feedback or suggestions without any obligation to compensate you for them (just as you have no obligation to offer them).

Special arbitration provision for United States or Canada users

PLEASE READ THIS SECTION CAREFULLY BECAUSE IT CONTAINS ADDITIONAL PROVISIONS APPLICABLE ONLY TO OUR UNITED STATES AND CANADA USERS. IF YOU ARE A WHATSAPP USER LOCATED IN THE UNITED STATES OR CANADA, IT REQUIRES YOU TO SUBMIT TO BINDING INDIVIDUAL ARBITRATION OF ALL DISPUTES, EXCEPT FOR THOSE THAT INVOLVE INTELLECTUAL PROPERTY DISPUTES AND EXCEPT THOSE THAT CAN BE BROUGHT IN SMALL CLAIMS COURT. THIS MEANS YOU ARE WAIVING YOUR RIGHT TO HAVE SUCH DISPUTES RESOLVED IN COURT BY A JUDGE OR JURY. THIS SECTION ALSO LIMITS THE TIME YOU HAVE TO START AN ARBITRATION OR, IF PERMISSIBLE, A COURT ACTION. FINALLY, THIS SECTION WAIVES YOUR RIGHT TO HAVE YOUR DISPUTE HEARD AND RESOLVED AS A CLASS ACTION, CLASS ARBITRATION, OR A REPRESENTATIVE ACTION.

“Excluded Dispute” means any Dispute relating to the enforcement or infringement of your or our intellectual property rights (such as copyrights, trademarks, domains, logos, trade dress, trade secrets, and patents). For clarity and notwithstanding the foregoing, those Disputes relating to, arising out of, or in any way in connection with your rights of privacy and publicity are not Excluded Disputes.

Federal Arbitration Act. The United States Federal Arbitration Act governs the interpretation and enforcement of this “Special Arbitration Provision for United States or Canada Users” section, including any question whether a Dispute between WhatsApp and you is subject to arbitration.

Agreement to Arbitrate for WhatsApp Users Located in the United States or Canada. For WhatsApp users located in the United States or Canada, WhatsApp and you each agree to waive the right to a trial by judge or jury for all Disputes, except for the Excluded Disputes. WhatsApp and you agree that all Disputes (except for the Excluded Disputes), including those relating to, arising out of, or in any way in connection with your rights of privacy and publicity, will be resolved through final and binding arbitration. WhatsApp and you agree not to combine a Dispute that is subject to arbitration under our Terms with a Dispute that is not eligible for arbitration under our Terms.

The arbitration will be administered by the American Arbitration Association (AAA) under its Commercial Arbitration Rules in effect at the time the arbitration is started, including the Optional Rules for Emergency Measures of Protection and the Supplementary Procedures for

Consumer-Related Disputes (together, the "AAA Rules"). The arbitration will be presided over by a single arbitrator selected in accordance with the AAA Rules. The AAA Rules, information regarding initiating a Dispute, and a description of the arbitration process are available at www.adr.org. The arbitrator will decide whether a Dispute can be arbitrated. The location of the arbitration and the allocation of fees and costs for such arbitration shall be determined in accordance with the AAA Rules. Notwithstanding the AAA Rules, we will reimburse you for all the AAA administrative fees in Disputes that are subject to the Supplementary Procedures for Consumer-Related Disputes, unless the arbitrator determines that a Dispute was filed for purposes of harassment or is patently frivolous.

Opt-Out Procedure. You may opt out of this agreement to arbitrate. If you do so, neither we nor you can require the other to participate in an arbitration proceeding. To opt out, you must notify us in writing postmarked within 30 days of the later of: (i) the date that you first accepted our Terms; and (ii) the date you became subject to this arbitration provision. You must use this address to opt-out:

WhatsApp Inc.
Arbitration Opt-Out
1601 Willow Road
Menlo Park, California 94025
United States of America

You must include: (1) your name and residence address; (2) the mobile phone number associated with your account; and (3) a clear statement that you want to opt out of our Terms' agreement to arbitrate.

Small Claims Court. As an alternative to arbitration, if permitted by your local "small claims" court's rules, you may bring your Dispute in your local "small claims" court, as long as the matter advances on an individual (non-class) basis.

Time Limit to Start Arbitration. We and you agree that for any Dispute (except for the Excluded Disputes) we and you must commence an arbitration proceeding within one year after the Dispute first arose; otherwise, such Dispute is permanently barred. This means that if we or you do not commence an arbitration within one year after the Dispute first arose, then the arbitration will be dismissed because it was started too late.

No Class Actions, Class Arbitrations, or Representative Actions for Users Located in the United States or Canada. We and you each agree that if you are a WhatsApp user located in the United States or Canada, each of we and you may bring Disputes against the other only on its or your own behalf, and not on behalf of any other person or entity, or any class of people. We and you each agree not to participate in a class action, a class-wide arbitration, Disputes brought in a private attorney general or representative capacity, or consolidated Disputes involving any other person or entity in connection with any Dispute.

Severability. If the prohibition against class actions and other Disputes brought on behalf of third parties is found to be unenforceable for a Dispute, then all of the provisions above under the

caption “Special Arbitration Provision for United States or Canada Users” will be null and void as to that Dispute.

Place to File Permitted Court Actions. If you opt out of the agreement to arbitrate, if your Dispute is an Excluded Dispute, or if the arbitration agreement is found to be unenforceable, you agree to be subject to the “Forum and Venue” provisions in the “Dispute Resolution” section set forth above.

Accessing WhatsApp's terms in different languages

To access our Terms in certain other languages, change the language setting for your WhatsApp session. If our Terms are not available in the language you select, we will default to the English version.

Please review the following documents, which provide additional information about your use of our Services:

WhatsApp Privacy Policy

WhatsApp Intellectual Property Policy

WhatsApp Brand Guidelines

WhatsApp Privacy Policy

Last modified: December 19, 2019 (archived versions)

Respect for your privacy is coded into our DNA. Since we started WhatsApp, we’ve aspired to build our Services with a set of strong privacy principles in mind.

WhatsApp provides messaging, Internet calling, and other services to users around the world. Our Privacy Policy helps explain our information (including message) practices. For example, we talk about what information we collect and how this affects you. We also explain the steps we take to protect your privacy – like building WhatsApp so delivered messages aren’t stored and giving you control over who you communicate with on our Services.

When we say “WhatsApp,” “our,” “we,” or “us,” we’re talking about WhatsApp Inc. This Privacy Policy (“Privacy Policy”) applies to all of our apps, services, features, software, and website (together, “Services”) unless specified otherwise.

Please also read WhatsApp’s Terms of Service (“Terms”), which describes the terms under which you use our Services.

Information We Collect

WhatsApp receives or collects information when we operate and provide our Services, including when you install, access, or use our Services.

Information You Provide

- Your Account Information. You provide your mobile phone number to create a WhatsApp account. You provide us the phone numbers in your mobile address book on a regular basis, including those of both the users of our Services and your other contacts. You confirm you are authorized to provide us such numbers. You may also add other information to your account, such as a profile name, profile picture, and status message.

- Your Messages. We do not retain your messages in the ordinary course of providing our Services to you. Once your messages (including your chats, photos, videos, voice messages, files, and share location information) are delivered, they are deleted from our servers. Your messages are stored on your own device. If a message cannot be delivered immediately (for example, if you are offline), we may keep it on our servers for up to 30 days as we try to deliver it. If a message is still undelivered after 30 days, we delete it. To improve performance and deliver media messages more efficiently, such as when many people are sharing a popular photo or video, we may retain that content on our servers for a longer period of time. We also offer end-to-end encryption for our Services, which is on by default, when you and the people with whom you message use a version of our app released after April 2, 2016. End-to-end encryption means that your messages are encrypted to protect against us and third parties from reading them.

- Your Connections. To help you organize how you communicate with others, we may create a favorites list of your contacts for you, and you can create, join, or get added to groups and broadcast lists, and such groups and lists get associated with your account information.

- Customer Support. You may provide us with information related to your use of our Services, including copies of your messages, and how to contact you so we can provide you customer support. For example, you may send us an email with information relating to our app performance or other issues.

Automatically Collected Information

- Usage and Log Information. We collect service-related, diagnostic, and performance information. This includes information about your activity (such as how you use our Services, how you interact with others using our Services, and the like), log files, and diagnostic, crash, website, and performance logs and reports.

- Transactional Information. If you pay for our Services, we may receive information and confirmations, such as payment receipts, including from app stores or other third parties processing your payment.

- Device and Connection Information. We collect device-specific information when you install, access, or use our Services. This includes information such as hardware model, operating system information, browser information, IP address, mobile network information including phone number, and device identifiers. We collect device location information if you use our location features, such as when you choose to share your location with your contacts, view locations nearby or those others have shared with you,

and the like, and for diagnostics and troubleshooting purposes such as if you are having trouble with our app's location features.

- Cookies. We use cookies to operate and provide our Services, including to provide our Services that are web-based, improve your experiences, understand how our Services are being used, and customize our Services. For example, we use cookies to provide WhatsApp for web and desktop and other web-based services. We may also use cookies to understand which of our FAQs are most popular and to show you relevant content related to our Services. Additionally, we may use cookies to remember your choices, such as your language preferences, and otherwise to customize our Services for you. Learn more about how we use cookies to provide you our Services.

- Status Information. We collect information about your online and status message changes on our Services, such as whether you are online (your "online status"), when you last used our Services (your "last seen status"), and when you last updated your status message.

Third-Party Information

- Information Others Provide About You. We receive information other people provide us, which may include information about you. For example, when other users you know use our Services, they may provide your phone number from their mobile address book (just as you may provide theirs), or they may send you a message, send messages to groups to which you belong, or call you.

- Third-Party Providers. We work with third-party providers to help us operate, provide, improve, understand, customize, support, and market our Services. For example, we work with companies to distribute our apps, provide our infrastructure, delivery, and other systems, supply map and places information, process payments, help us understand how people use our Services, and market our Services. These providers may provide us information about you in certain circumstances; for example, app stores may provide us reports to help us diagnose and fix service issues.

- Third-Party Services. We allow you to use our Services in connection with third-party services. If you use our Services with such third-party services, we may receive information about you from them; for example, if you use the WhatsApp share button on a news service to share a news article with your WhatsApp contacts, groups, or broadcast lists on our Services, or if you choose to access our Services through a mobile carrier's or device provider's promotion of our Services. Please note that when you use third-party services, their own terms and privacy policies will govern your use of those services.

How We Use Information

We use all the information we have to help us operate, provide, improve, understand, customize, support, and market our Services.

- Our Services. We operate and provide our Services, including providing customer support, and improving, fixing, and customizing our Services. We understand how people

use our Services, and analyze and use the information we have to evaluate and improve our Services, research, develop, and test new services and features, and conduct troubleshooting activities. We also use your information to respond to you when you contact us. We use cookies to operate, provide, improve, understand, and customize our Services.

- Safety and Security. We verify accounts and activity, and promote safety and security on and off our Services, such as by investigating suspicious activity or violations of our Terms, and to ensure our Services are being used legally.

- Communications About Our Services and the Facebook Family of Companies. We communicate with you about our Services and features and let you know about our terms and policies and other important updates. We may provide you marketing for our Services and those of the Facebook family of companies, of which we are now a part.

- No Third-Party Banner Ads. We do not allow third-party banner ads on WhatsApp. We have no intention to introduce them, but if we ever do, we will update this policy.

- Commercial Messaging. We will allow you and third parties, like businesses, to communicate with each other using WhatsApp, such as through order, transaction, and appointment information, delivery and shipping notifications, product and service updates, and marketing. For example, you may receive flight status information for upcoming travel, a receipt for something you purchased, or a notification when a delivery will be made. Messages you may receive containing marketing could include an offer for something that might interest you. We do not want you to have a spammy experience; as with all of your messages, you can manage these communications, and we will honor the choices you make.

Information You And We Share

You share your information as you use and communicate through our Services, and we share your information to help us operate, provide, improve, understand, customize, support, and market our Services.

- Account Information. Your phone number, profile name and photo, online status and status message, last seen status, and receipts may be available to anyone who uses our Services, although you can configure your Services settings to manage certain information available to other users.

- Your Contacts and Others. Users with whom you communicate may store or reshare your information (including your phone number or messages) with others on and off our Services. You can use your Services settings and the block feature in our Services to manage the users of our Services with whom you communicate and certain information you share.

- Third-Party Providers. We work with third-party providers to help us operate, provide, improve, understand, customize, support, and market our Services. When we share

information with third-party providers, we require them to use your information in accordance with our instructions and terms or with express permission from you.

- Third-Party Services. When you use third-party services that are integrated with our Services, they may receive information about what you share with them. For example, if you use a data backup service integrated with our Services (such as iCloud or Google Drive), they will receive information about what you share with them. If you interact with a third-party service linked through our Services, you may be providing information directly to such third party. Please note that when you use third-party services, their own terms and privacy policies will govern your use of those services.

Affiliated Companies

We joined the Facebook family of companies in 2014. As part of the Facebook family of companies, WhatsApp receives information from, and shares information with, this family of companies. We may use the information we receive from them, and they may use the information we share with them, to help operate, provide, improve, understand, customize, support, and market our Services and their offerings. This includes helping improve infrastructure and delivery systems, understanding how our Services or theirs are used, securing systems, and fighting spam, abuse, or infringement activities. Facebook and the other companies in the Facebook family also may use information from us to improve your experiences within their services such as making product suggestions (for example, of friends or connections, or of interesting content) and showing relevant offers and ads. However, your WhatsApp messages will not be shared onto Facebook for others to see. In fact, Facebook will not use your WhatsApp messages for any purpose other than to assist us in operating and providing our Services.

Learn more about the Facebook family of companies and their privacy practices by reviewing their privacy policies.

Assignment, Change Of Control, And Transfer

All of our rights and obligations under our Privacy Policy are freely assignable by us to any of our affiliates, in connection with a merger, acquisition, restructuring, or sale of assets, or by operation of law or otherwise, and we may transfer your information to any of our affiliates, successor entities, or new owner.

Managing Your Information

If you would like to manage, change, limit, or delete your information, we allow you to do that through the following tools:

- Services Settings. You can change your Services settings to manage certain information available to other users. You can manage your contacts, groups, and broadcast lists, or use our block feature to manage the users with whom you communicate.

- Changing Your Mobile Phone Number, Profile Name and Picture, and Status Message. You must change your mobile phone number using our in-app change number

feature and transfer your account to your new mobile phone number. You can also change your profile name, profile picture, and status message at any time.

- Deleting Your WhatsApp Account. You may delete your WhatsApp account at any time (including if you want to revoke your consent to our use of your information) using our in-app delete my account feature. When you delete your WhatsApp account, your undelivered messages are deleted from our servers as well as any of your other information we no longer need to operate and provide our Services. Be mindful that if you only delete our Services from your device without using our in-app delete my account feature, your information may be stored with us for a longer period. Please remember that when you delete your account, it does not affect the information other users have relating to you, such as their copy of the messages you sent them.

Law And Protection

We may collect, use, preserve, and share your information if we have a good-faith belief that it is reasonably necessary to: (a) respond pursuant to applicable law or regulations, to legal process, or to government requests; (b) enforce our Terms and any other applicable terms and policies, including for investigations of potential violations; (c) detect, investigate, prevent, and address fraud and other illegal activity, security, or technical issues; or (d) protect the rights, property, and safety of our users, WhatsApp, the Facebook family of companies, or others.

Our Global Operations

You agree to our information practices, including the collection, use, processing, and sharing of your information as described in this Privacy Policy, as well as the transfer and processing of your information to the United States and other countries globally where we have or use facilities, service providers, or partners, regardless of where you use our Services. You acknowledge that the laws, regulations, and standards of the country in which your information is stored or processed may be different from those of your own country.

Updates To Our Policy

We may amend or update our Privacy Policy. We will provide you notice of amendments to this Privacy Policy, as appropriate, and update the “Last Modified” date at the top of this Privacy Policy. Your continued use of our Services confirms your acceptance of our Privacy Policy, as amended. If you do not agree to our Privacy Policy, as amended, you must stop using our Services. Please review our Privacy Policy from time to time.

California Consumer Privacy Act

California residents may learn more about their rights, including how to exercise their rights under the California Consumer Privacy Act of 2018, by clicking here.

Contact Us

If you have questions about our Privacy Policy, please contact us.

WhatsApp Inc.
Privacy Policy
1601 Willow Road
Menlo Park, California 94025
United States of America

California Privacy Notice

California residents can learn more about their privacy rights in our California Privacy Notice.

WHATSAPP INC., THE EU-U.S. PRIVACY SHIELD AND THE SWISS-U.S. PRIVACY SHIELD

WhatsApp Inc. ("WhatsApp") has certified to the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework with the U.S. Department of Commerce regarding the collection and processing of personal data from our business partners in the European Union and Switzerland ("Partners") in connection with the products and services described in the Scope section below and in our certification. To learn more about the Privacy Shield program please visit www.privacyshield.gov.

Scope: WhatsApp adheres to the Privacy Shield Principles for the following areas of our business (collectively the "Partner Services"):

- WhatsApp Business Products: WhatsApp creates apps, services, features, APIs, software, or website that enable businesses to interact with users of WhatsApp's products and services ("Business Products"). Partners (the data controllers) may submit personal information about their customers to WhatsApp using WhatsApp's Business Products. While Partners decide what information to submit, it typically includes things like customer phone numbers and other information under the Partner's control. For more information, customers may contact the relevant Partner. WhatsApp uses the personal data provided by Partners to provide Business Products in accordance with the terms applicable to the relevant Business Product and otherwise with the Partners' instructions. WhatsApp works with its Partners to ensure that individuals are offered appropriate choices in accordance with the Privacy Shield Principles.

Access. Within the scope of our authorization to do so, and in accordance with our commitments under Privacy Shield, WhatsApp will work with its Partners to provide individuals access to personal data about them that WhatsApp holds on behalf of its Partners. WhatsApp will also take reasonable steps to enable individuals, either directly or in connection with the Partners, to correct, amend, or delete personal data that is demonstrated to be inaccurate.

Third Parties. WhatsApp may transfer data within the Facebook family of companies and to third parties, including service providers and other partners. In accordance with the Privacy Shield Principles, WhatsApp is liable for any processing of personal data by such third parties that is inconsistent with the Privacy Shield Principles unless WhatsApp was not responsible for the event giving rise to any alleged damage.

Legal Requests. Personal data that is transferred to us by our Partners may be subject to disclosure pursuant to legal requests or other judicial and government process, such as subpoenas, warrants, or orders. For more information, review the “Law and Protection” section of the WhatsApp Privacy Policy.

Enforcement. WhatsApp's compliance with the Privacy Shield Principles is subject to the investigatory and enforcement powers of the U.S. Federal Trade Commission.

Questions and Disputes. Please contact us with any questions or concerns relating to our Privacy Shield certification. You have the option to resolve any applicable disputes you have with us in connection with our certification through TrustArc, an alternative dispute resolution provider based in the United States. You can contact TrustArc through their website. In certain circumstances, the Privacy Shield Framework provides the right to invoke binding arbitration to resolve complaints not resolved by other means, as described in Annex I to the Privacy Shield Principles. Additionally, as part of the Privacy Shield Framework, the U.S. State Department Senior Coordinator serves as the Ombudsperson to facilitate the processing of requests relating to national security access to data transmitted from the EU or Switzerland to the U.S.

For more information about WhatsApp's privacy practices please review our Privacy Policy.

Intellectual Property Policy: Your Copyrights and Trademarks

WhatsApp Inc. ("WhatsApp," "our," "we," or "us") is committed to helping people and organizations protect their intellectual property rights. Our users agree to our Terms of Service ("Terms") by installing, accessing, or using our apps, services, features, software, or website (together, "Services"). Our Terms do not allow our users to violate someone else's intellectual property rights when using our Services, including their copyrights and trademarks.

As explained in more detail in our Privacy Policy, we do not retain our users' messages in the ordinary course of providing our Services. We do, however, host our users' account information, including our users' profile picture, profile name, or status message, if they decide to include them as part of their account information.

Copyright

To report copyright infringement and request that WhatsApp remove any infringing content it is hosting (such as a WhatsApp user's profile picture, profile name, or status message), please email a completed copyright infringement claim to ip@whatsapp.com (including all of the information listed below). You can also mail a complete copyright infringement claim to WhatsApp's copyright agent:

WhatsApp Inc.
Attn: WhatsApp Copyright Agent
1601 Willow Road
Menlo Park, California 94025
United States of America
ip@whatsapp.com

Before you report a claim of copyright infringement, you may want to send a message to the relevant WhatsApp user you believe may be infringing your copyright. You may be able to resolve the issue without contacting WhatsApp.

Trademark

To report trademark infringement and request that WhatsApp remove any infringing content it is hosting, please email a complete trademark infringement claim to ip@whatsapp.com (including all of the information listed below).

Before you report a claim of trademark infringement, you may want to send a message to the relevant WhatsApp user you believe may be infringing your trademark. You may be able to resolve the issue without contacting WhatsApp.

What to include in your copyright or trademark infringement claim to WhatsApp

Please include all of the following information when reporting a copyright or trademark infringement claim to WhatsApp:

- Your complete contact information (full name, mailing address, and phone number). Note that we regularly provide your contact information, including your name and email address (if provided), the name of your organization or client who owns the rights in question, and the content of your report to the person whose content you are reporting. You may wish to provide a professional or business email address where you can be reached.

- A description of the copyrighted work or trademark that you claim has been infringed.

- A description of the content hosted on our Services that you claim infringes your copyright or trademark.

- Information reasonably sufficient to permit us to locate the material on our Services. The easiest way to do this is by providing us the phone number of the individual who has submitted the infringing content on our Services.

- A declaration that:

    - You have a good faith belief that use of the copyrighted or trademarked content described above, in the manner you have complained of, is not authorized by the copyright or trademark owner, its agent, or the law;

    - The information in your claim is accurate; and

    - You declare, under penalty of perjury, that you are the owner or authorized to act on behalf of the owner of an exclusive copyright or trademark that is allegedly infringed.

- Your electronic signature or physical signature.

Cookies

About cookies

A cookie is a small text file that a website you visit asks your browser to store on your computer or mobile device.

How we use cookies

We use cookies to understand, secure, operate, and provide our Services. For example, we use cookies:

- to provide WhatsApp for web and desktop and other Services that are web-based, improve your experiences, understand how our Services are being used, and customize our Services;
- to understand which of our FAQs are most popular and to show you relevant content related to our Services;
- to remember your choices, such as your language preferences, and otherwise to customize our Services for you; and
- to rank the FAQs on our website based on popularity, understand mobile versus desktop users of our web-based Services, or understand popularity and effectiveness of certain of our web pages.

How to control cookies

You can follow the instructions provided by your browser or device (usually located under "Settings" or "Preferences") to modify your cookie settings. Please note that if you set your browser or device to disable cookies, certain of our Services may not function properly.

WhatsApp Payments

WhatsApp Payments Terms of Service

Last modified: July 9, 2018 (archived versions)

WhatsApp Inc. (“WhatsApp,” “our,” “we,” or “us”) provides messaging, Internet calling, and other services to users around the world, including the ability to send and receive payments through designated payment service providers (“PSPs”) in India (“Payments”) via Unified Payments Interface (“UPI”) developed by the National Payments Corporation of India (“NPCI”). Payments is a “Service” as defined in the WhatsApp Terms of Service (“Terms”), and the following WhatsApp Payments Terms of Service (“Payments Terms”) supplement the Terms and apply to your use of Payments. You agree to the Payments Terms when you use Payments.

About our payment service

Our Role. Payments is a service we provide through, and in coordination with, designated PSPs. We provide a convenient platform that enables you to submit transaction instructions to PSPs for processing via UPI. We are not a licensed financial institution, do not receive, transfer, or store any funds in connection with Payments, and are not responsible for UPI service interruptions or acts or omissions of PSPs or banks including the payment, settlement, and clearance of funds. You have a separate relationship with your bank regarding your bank account, and WhatsApp has no affiliation with your bank in this respect.

PSP's Role. When you send or receive funds through Payments, a designated PSP receives the instructions and processes the transaction via UPI. By using Payments, you will also need to agree to the PSP's terms and privacy policy, which will be presented to you when you first use Payments. The PSP's terms and privacy policy are also available here. These Payments Terms govern the relationship between WhatsApp and you regarding Payments, and the PSP's terms govern the relationship between the PSP and you.

Eligibility. To use Payments, you must use a phone number with the country code for India and have a bank account with a bank that supports UPI. The phone number you use for our Services must be the same phone number linked to your bank account used for Payments.

Registration and UPI PIN setup. You must be an owner of the bank account you use to send and receive funds through Payments. After you provide information to confirm your mobile banking account, WhatsApp facilitates creation of a UPI ID (virtual payment address) that is associated with your WhatsApp account. Since your transaction instructions are processed via UPI, you must have a UPI PIN to send payments. We will ask you to create a UPI PIN to send payments if you do not already have one for your bank account.

Age. You must be at least 18 years old to use Payments.

Credits. We may credit your bank account for purposes including rewards and special offers. Our affiliate WhatsApp Application Services Private Limited provides such credits on our behalf.

Fees and Taxes. You must pay any applicable fees arising out of your use of Payments, including any overdraft, transaction, or other fees charged by your bank, PSPs, or WhatsApp. You must comply with applicable tax laws in connection with your use of Payments, including reporting and payment of any taxes related to transactions made through Payments and any income received from such transactions. WhatsApp is not responsible for withholding, collecting, reporting, or remitting any sales, use, value added, or other tax arising from any transaction you complete using Payments.

Privacy policy and user data

WhatsApp cares about your privacy. Our Privacy Policy applies to your use of Payments. Because additional information will be collected and processed when you use Payments, the WhatsApp Payments Privacy Policy also applies to your use of Payments. The WhatsApp Payments Privacy Policy describes additional information practices applicable to Payments, including the types of information we receive and collect from you when you use Payments and how we use and share this information. If you use Payments, you agree to our data practices,

including the collection, use, processing, and sharing of your information as described in our Privacy Policy and our Payments Privacy Policy.

Use of payments

Payment Amount. You are responsible for the total payment amount. You must ensure that you have sufficient funds in your bank account before executing any transaction through Payments. Your payment will not be sent if the PSP or your bank determines that your bank account lacks sufficient funds to cover the entire transaction amount.

Acceptable Use of Payments. You must access and use Payments only for legal, authorized, and acceptable purposes, according to our Terms and posted policies including merchant policies as may be published from time to time. A PSP or WhatsApp may impose limits on your ability to send or receive payments, including transaction limits. A PSP or WhatsApp may also cancel any transaction if we believe the transaction violates the Terms, these Payments Terms, posted policies, or the PSP's terms.

Purchase Transactions. If you use Payments to pay for goods or services, you agree to make legitimate purchases and to be bound by any terms of the sale. We have no responsibility for any goods or services purchased using Payments, including for any claims, damages, losses, liabilities, chargebacks or disputes associated with transactions. WE MAKE NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PRODUCTS OR SERVICES PURCHASED USING PAYMENTS.

Payments Transactions Are Final. Once you submit a payment, it is final. WhatsApp does not provide refunds or facilitate chargebacks. WhatsApp is not liable for unauthorized transactions. We assume no responsibility for the underlying transaction of funds, or the actions or identity of any transfer recipient or sender.

Business Use of Payments. If you are a business and use our Services, you must comply with all applicable laws associated with your use of our Services, including Payments. You must clearly disclose any applicable terms and fees to your customers and promptly fulfill any goods or services you sell using Payments in accordance with any sale terms and applicable laws. WhatsApp is not a party to the transaction.

Other

- If there is any conflict between these Payments Terms and the Terms, these Payments Terms control solely with respect to your use of Payments and only to the extent of the conflict.

- We may amend or update these Payments Terms. We will provide you notice of amendments to our Payments Terms, as appropriate, and update the "Last Modified" date at the top of our Payments Terms. Your continued use of Payments confirms your acceptance of our Payments Terms, as amended. If you do not agree to our Payments Terms, as amended, you must stop using Payments. Please review our Payments Terms from time to time.

WhatsApp Payments Privacy Policy

Last modified: July 9, 2018 (archived versions)

The WhatsApp Privacy Policy helps explain our information practices. Our Services may include enabling you to send and receive payments ("Payments"), a service we provide through, and in coordination with, designated payment service provider ("PSP") banks.

This Payments Privacy Policy helps explain our information practices when you use Payments. We use all the information we have to operate, provide, improve, understand, customize, support, and market our Services. PSPs may also collect, use, and share information as set forth in their privacy policies, in conjunction with helping to provide Payments to you.

This Payments Privacy Policy supplements our Privacy Policy, which applies to the use of our Services, including Payments. Please also see WhatsApp's Terms of Service ("Terms"), which describe the terms under which you use our Services including Payments, and the WhatsApp Payments Terms of Service ("Payments Terms"), which supplement the Terms, govern your use of Payments, and describe Payments in more detail. Please read all of these documents carefully.

Information We Collect

In addition to what is described in our Privacy Policy, we receive information when we provide Payments.

Information You Provide

- Registration and BHIM UPI PIN Setup Information. When you register to use Payments, you provide your bank's name and confirm the bank account for use with Payments. If you do not have a BHIM UPI PIN already for your bank account, you can set one using your partial debit card number, expiry date, PIN (if required by your bank), and bank-issued one-time password (OTP) to set up a BHIM UPI PIN. We do not retain Customer Payment Sensitive Data (partial debit card number, expiry date, PIN, OTP, or BHIM UPI PIN). WhatsApp does not have access to the BHIM UPI PIN because it is encrypted by Common Library (CL) software provided by National Payment Corporation of India.

- Payment Transaction Information. When you send, receive, or request payments, you provide or confirm transaction information such as the receiver's name and BHIM UPI ID (virtual payment address), and payment amount. To authorize every payment you make, you need to use your BHIM UPI PIN. This payment transaction information is handled securely. WhatsApp messages sent with payments are delivered once the transaction has processed and are treated as described in our Privacy Policy.

Automatically Collected Information

- Information To Enable Payments. We collect information when you send, receive, or request a payment, including the date and time and reference transaction number. When the sender makes a payment to a WhatsApp contact, we collect the sender and receiver's names and BHIM UPI IDs.

Information We Receive From Service Providers, PSPs, And NPCI

- Service Providers. We work with service providers to help us operate, provide, improve, understand, customize, support, and market Payments; provide customer support; and keep our system safe and secure. For example, we work with companies to assist with customer support, and we receive information from them that you provide over the phone or email.

- PSP Banks and NPCI. We enable Payments by working with multiple PSP banks and the National Payments Corporation of India (NPCI) to facilitate the movement of funds between the sender and receiver's bank accounts. They provide us information about you or your Payments transactions in certain circumstances; for example, we may receive information about you or your transactions from a PSP such as information to confirm your registration, the payment sender or receiver's name, account status and balance sufficiency, transaction reference IDs, risk or fraud alerts, and the like. BHIM UPI transaction information is stored in encrypted format. Please note that the PSP or NPCI's terms and privacy policies will govern your use of its services.

How We Use Information

We use all the information we have to operate, provide, improve, understand, customize, support, and market our Services. This includes using the information to provide Payments and customer support, to protect you and others using our Services from fraud, abuse, or other misconduct, and to review your account activity to determine whether you continue to meet our Terms and Payments Terms. WhatsApp works with the other Facebook Companies to provide Payments, including to send payment instructions to PSPs.

Information You And We Share

In addition to what is described in our Privacy Policy, you share your information when you use Payments, and we share your information to help us operate, provide, improve, understand, customize, support, and market Payments.

- Payment Senders And Recipients. You and people with whom you send or receive payments may store or reshare your BHIM UPI ID, name, or transaction information with others on or off our Services.

- Service Providers. In conformance with our relationship with PSPs, WhatsApp works with service providers including Facebook. To send payment instructions to PSPs; maintain your transaction history; provide customer support; improve, understand, customize, support, and market Payments; and keep our Services safe and secure, including to detect, prevent, or otherwise address fraud, safety, security, abuse, or other misconduct, we share information we collect under this Payments Privacy Policy with service providers including Facebook. Facebook will have no access to encrypted BHIM UPI transaction information in clear format. When we share information with service providers, we require them to use your information on our behalf in accordance with our instructions and terms.

- PSP Banks and NPCI. We share information with PSPs and NPCI to help us operate Payments. The PSP and NPCI receive transaction information such as payment amount and BHIM UPI IDs, so they can facilitate the movement of funds between the sender's and receiver's bank accounts. Please note that when you use PSP and NPCI services, their own terms and privacy policies will govern your use of those services.

Managing And Deleting Your Information

If you would like to manage, change, limit, or delete your Payments information, we allow you to do that through your payment settings or by deleting your WhatsApp account. With your payment settings, you may register additional bank account(s), deregister existing bank account(s) from your BHIM UPI ID, change the PSP bank, and clear your transaction history. When you delete your WhatsApp account, your bank account will be deregistered from your BHIM UPI ID automatically.

Updates To Our Policy

We will notify you before we make changes to this Payments Privacy Policy and give you the opportunity to review the revised Payments Privacy Policy before you choose to continue using Payments.

PSP Terms and Privacy Policy

ICICI Bank's Payment Service Terms

These terms and conditions ("Terms") apply to and regulate the provision of a Unified Payments Interface Service–based electronic fund transfer and fund collection facility provided by ICICI Bank to its Users through the application owned and maintained by WhatsApp ("Facility") subject to the Terms herein specified.

The User may apply for the Facility by installing the WhatsApp mobile application on their device and completing a one-time activation/registration for the Facility. The User will have an option to set a virtual payment address ("VPA") by linking an Account maintained with any bank in India through a one-time registration process defined and standardised by NPCI/ICICI Bank and then start transacting. The process of registration is:

- WhatsApp customers need to select their bank followed by the account they want to link. Thereafter, they need to enter the last six digits of their debit card number along with the expiry details to create a VPA.

- By applying for and accessing the Facility, the User accepts these terms, which shall govern the provision of the Facility by ICICI Bank. The Terms shall be in addition to and not in derogation of the regulatory guidelines issued from time to time.

1. Definitions

In this document, the following words and phrases have the meanings set opposite them unless the context indicates otherwise. Words or expressions used in this form, but not specifically defined herein, shall have the respective meanings assigned to them by NPCI.

1.1. "Account(s)" refers to the resident Indian savings and/or current bank account(s) held and maintained with any bank in India which is used for operations through the Facility.

1.2. "User" means the applicant/remitter availing of the Facility through the Account(s) and satisfying the following conditions:

a. has a valid mobile phone number;

b. has downloaded the WhatsApp mobile application on the device; and

c. has an Account(s).

1.3. "ICICI Bank" means ICICI Bank Limited, a company incorporated under the Companies Act, 1956, and licensed as a bank under the Banking Regulation Act, 1949, and having its corporate office at ICICI Bank Towers, Bandra Kurla Complex, Mumbai 400 051 (which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns).

1.4. "NPCI UPI System" means the switch and related equipment and software owned by NPCI to provide the UPI-based fund transfer and funds collection facility including the National Financial Switch.

1.5. "Payment Order" means an unconditional instruction issued by the User through the WhatsApp Platform to effect a fund transfer for a certain sum of money expressed in Indian rupees, to the designated account of a designated beneficiary by debiting the Account(s) of the User.

1.6. "PSP (Payment Service Provider)" refers to banks which are allowed to acquire Users and provide payment services to Users and entities.

1.7. "UPI" refers to the Unified Payments Interface Service offered by NPCI in collaboration with its member banks.

1.8. "WhatsApp" means WhatsApp Inc., a Delaware, United States, company with offices at 1601 Willow Road, Menlo Park, CA 94025. It provides smartphone users with certain services via their phone's Internet connection, including sending and receiving messages, calls, photos, videos, documents and voice messages.

1.9. "WhatsApp Application" means WhatsApp's existing and future applications and services including its business and consumer applications and services for mobile, desktop and web.

2. Applicability of Terms

The User hereby acknowledges that the User has read and understood the Terms and agrees that the rights and obligations provided therein and in these Terms insofar as it relates to the User shall be binding on the User with regard to every Payment Order issued by them for execution in the NPCI UPI System. The User understands and agrees that nothing in terms of availing the Facility shall be construed as creating any contractual or other rights against NPCI or any participant in the NPCI UPI System other than ICICI Bank. Notwithstanding anything contained herein, all terms and conditions stipulated by ICICI Bank in connection with the Account(s) shall continue to apply. The Privacy Policy and Customer Rights Policy of ICICI Bank shall continue to apply on the Users. These Terms and Conditions are in addition to any terms and conditions that WhatsApp may prescribe for the use of its WhatsApp Application.

3. Scope of the Facility

The Facility offers an instant, 24x7, interbank electronic fund transfer or fund collection service to the customers of UPI member banks. Users can put in a request for fund transfers or respond to funds collection in a secure manner for any of their linked Account(s) as per the Terms, which may be changed by ICICI Bank as it deems fit.

Rights and Obligations of the User

3.1. The User shall be entitled, subject to Terms, to issue Payment Orders for execution by ICICI Bank.

3.2. The Payment Order shall be issued by the User, in the form as prescribed by ICICI Bank, which is complete in all particulars. The User shall be responsible for the accuracy of the particulars given in the Payment Order for the Facility and shall be liable to compensate ICICI Bank for any loss arising on account of any error in the Payment Order.

3.3. The User shall be bound by any Payment Order executed by ICICI Bank if ICICI Bank has executed the Payment Order in good faith and in compliance with the instructions given by the User on the WhatsApp Application.

3.4. The User authorises ICICI Bank to act as a PSP and debit Account(s) as per instructions received by way of Payment Orders. The User understands that although multiple bank accounts can be linked with the Facility, debit/credit transactions can be done from the default account which is selected by the User before transactions until changed by the User for subsequent transactions. Each Account that may be linked with the UPI facility can be opened with a separate username. The User shall ensure availability of funds in their Account(s) towards the fulfillment of the Payment Order before/at the time of the execution of the Payment Order by ICICI Bank. The User hereby authorises ICICI Bank to debit the Account(s) of the User for any liability incurred by ICICI Bank on behalf of the User for execution of the Payment Order issued by the User. The User understands and agrees that once a fund collection request is accepted, the default account will automatically be credited with such amounts as may be mentioned in the Payment Order. The User understands and agrees that such amounts once credited to the default account cannot be reversed by the User.

3.5. The User agrees that the Payment Order shall become irrevocable when it is executed by ICICI Bank.

3.6. The User agrees that they shall not be entitled to make any claim against Reserve Bank of India ("RBI") and/or National Payment Corporation of India ("NPCI") in respect to the Facility.

3.7. The User shall provide correct beneficiary details to ICICI Bank at the time of availing the Facility. The User shall be solely responsible for entering wrong beneficiary details including but not limited to incorrect VPA, incorrect Aadhaar number or incorrect mobile number, due to which the funds are transferred to an incorrect beneficiary.

3.8. The User shall not hold ICICI Bank responsible for any damage, claim or issue arising out of or in connection with any purchase of goods/services from merchants through Payment Orders issued by the Facility. The User understands and agrees that all such losses, damages and issues shall constitute a claim against such merchants.

3.9. The User agrees that the Facility is offered in line with the RBI's guidelines on mobile banking which are subject to change from time to time.

3.10. The User shall inform ICICI Bank immediately of any inquiry, question or issue raised by any authority including but not limited to any statutory authority or official regarding and relating to ICICI Bank, as well as expeditiously notify ICICI Bank of any show causes, seizure or similar action and provide copies of any notices, memos or correspondences received from such authority. The User shall not unilaterally file any response/reply to such an authority without the prior approval of and vetting by ICICI Bank.

3.11. The User shall be solely liable for ensuring the availability of sufficient funds in the Account(s) at all times for the purpose of availing the Facility. The User agrees that in the event there are insufficient funds in the Account, ICICI Bank can decline the transaction instruction.

4. Undertakings and Representations

The User hereby undertakes, represents and warrants to ICICI Bank that:

4.1. The role of ICICI Bank hereunder is limited to acting as a Payment Service Provider, which would include receiving from WhatsApp, bank information/data of the User for the purpose of (i) creation of the VPA; and (ii) processing the transactions initiated by the User using the UPI Facility as per applicable law.

4.2. The User shall be in compliance at all times with applicable laws regarding the use of the Facility and shall not use the Facility in violation of the applicable laws.

5. General Terms

5.1. The laws of India shall govern these terms and conditions and/or the operations in the Account(s) maintained with ICICI Bank. Any legal action or proceedings arising out of these Terms shall be brought in the courts or tribunals at Mumbai in India. ICICI Bank may, however, in its absolute discretion commence any legal action or proceedings arising out of these Terms in any other court, tribunal or other appropriate forum, and the User hereby consents to that jurisdiction.

5.2. The clause headings in these Terms are only for convenience and do not affect the meaning of the relative clause.

5.3. ICICI Bank may subcontract and employ agents to carry out any of its obligations hereunder.

5.4. ICICI Bank has the absolute discretion to amend or supplement any of the Terms as stated herein at any time and will endeavour to give prior notice of 15 days for such changes wherever feasible. By using the new services, the User shall be deemed to have accepted the changed terms and conditions.

5.5. Notices under these Terms may be given in writing by delivering them by hand, or on ICICI Bank's website www.icicibank.com, or by sending them by post to the last address given by the User and, in the case of ICICI Bank, to its corporate office address. In addition, ICICI Bank may also publish notices of general nature, which are applicable to all Users, in a newspaper or on its website at www.icicibank.com. Such notices will have the same effect as a notice served individually to each User. Notice and instructions will be deemed served 7 days after posting or upon receipt in the case of hand delivery, cable, telex or facsimile.

5.6. Any provision of these Terms which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of prohibition or unenforceability but shall not invalidate the remaining provisions of these Terms or affect such provision in any other jurisdiction. ICICI Bank shall have the right of set-off and lien, irrespective of any other lien or charge, present as well as future on the deposits held in the Account(s) to the extent of all outstanding dues, whatsoever, arising as a result of the Facility extended to and/or used by the User.

6. Sharing of Information

6.1. The User irrevocably and unconditionally authorises ICICI Bank to access all the User's Account(s) and records for the purpose of providing the Facility. The User agrees that ICICI Bank and its affiliates (or their contractors) may hold and process their personal information and all other information concerning their Account(s) on computer or otherwise in connection with the Facility as well as for analysis, credit scoring and marketing.

6.2. The User hereby expressly consents to and permits ICICI Bank, its affiliates and all the parties involved in the payment system including but not limited to Payments System Providers, acquiring banks, partner banks, the issuer bank of the sender's funding account, the issuer bank of the beneficiary's bank account, NPCI and RBI to collect, store and share such information including but not limited to their personal information such as name, address, all transaction details carried out through the WhatsApp Platform or information with respect to third parties and the beneficiary including bank account number.

6.3. In the event the User is a beneficiary, the User hereby consents ICICI Bank to permit the remitter to store their information including but not limited to bank account number for the purpose of sending the payments.

6.4. The User understands and agrees that certain information collected by ICICI Bank, including information obtained from Payments System Providers, acquiring banks, partner banks, the issuer bank of the sender's funding account, the issuer bank of the beneficiary's bank account, NPCI and RBI or third parties, is shared between ICICI Bank and WhatsApp to provide the Facility. In addition, the User understands and agrees that ICICI Bank is required to share their personal information, such as name, email address and payment instrument details, with third parties for the purposes of processing transactions or for the use of the services to register their complaints. ICICI Bank will abide by NPCI guidelines and adhere to the customer dispute management process specified by NPCI.

6.5. The User agrees and understands that the transaction will be recorded in the statement of account as given to the User by the User's bank. The User agrees that they shall not be entitled to dispute the correctness of the execution of the Payment Order or the amount debited to their Account(s) if they fail to report the discrepancy as per NPCI guidelines.

7. Disclaimer of Liability

7.1. ICICI Bank does not hold out any warranty and makes no representation about the quality of the Facility. The User agrees and acknowledges that ICICI Bank shall not be liable and shall in no way be held responsible for any damages whatsoever, whether such damages are direct, indirect, incidental or consequential and irrespective of whether any claim is based on loss of revenue, interruption of business, transaction carried out by the User and processed by ICICI Bank, information provided or disclosed by ICICI Bank regarding Account(s) or any loss of any character or nature whatsoever and whether sustained by the User or by any other person. While ICICI Bank shall endeavour to promptly execute and process the transactions as proposed to be made by the User, ICICI Bank shall not be responsible for any non-response or delay in responding due to any reason whatsoever, including due to failure of operational systems or any requirement of law. ICICI Bank shall not be liable for any loss, claim or damage suffered by the User and/or any other third party arising out of or resulting from failure of a UPI transaction on account of time-out transaction; i.e., where no response is received from NPCI or the beneficiary bank to the transaction request and/or where mobile number or account number of the beneficiary does not exist. Further, ICICI Bank shall also not be liable for any loss, damage and/or claim arising out of or resulting from wrong beneficiary details, mobile number and/or account details being provided by the Customer. ICICI Bank shall, under no circumstance, be held liable to the User if Facility access is not available in the desired manner for reasons including but not limited to natural calamities, legal restraints, faults in the telecommunication network or network failure, or any other reason beyond the control of ICICI Bank.

7.2. The User is responsible for the accuracy and authenticity of the Payment Order provided to ICICI Bank and the same, if in the form and manner prescribed by ICICI Bank, shall be considered to be sufficient to operate the UPI Facility. ICICI Bank shall not be required to independently verify the Payment Order. ICICI Bank has no liability if it does not or is unable to stop or prevent the implementation of any Payment Order issued by the User. Once a Payment Order is issued by the User, the same cannot be subsequently revoked by the User.

7.3. ICICI Bank states that it has no liability or obligation to keep a record of the Payment Orders to provide information to the User or for verifying the Payment Orders. ICICI Bank shall refuse

to comply with the Payment Orders without assigning any reason and shall not be under any duty to assess the prudence or otherwise of any Payment Order. ICICI Bank has the right to suspend the transactions with respect to the UPI Facility if it has reason to believe that the User's Payment Orders will lead to or expose to direct or indirect loss to ICICI Bank or may require an indemnity from the User before continuing to operate the UPI Facility.

7.4. All Payment Orders, requests, directives, orders and directions, entered by the User, are based upon the User's decisions and are the sole responsibility of the User.

7.5. Users shall not hold ICICI Bank responsible and/or liable in any manner whatsoever for any losses/damages/costs incurred by the User for creation of the VPA and/or initiating/processing/cancelling any transaction on the WhatsApp Platform.

8. Fraud or Unauthorised Use

ICICI Bank shall not be responsible for, and the User shall solely be responsible for, any unauthorised access or use of their personal or financial information through the WhatsApp Platform.

9. Indemnity

The User agrees, at their own expense, to indemnify, defend and hold harmless ICICI Bank against any claim, suit, action or other proceeding brought against ICICI Bank, to the extent that such claim, suit, action or other proceeding brought against ICICI Bank is based on or arises in connection with the use of the Facility with reference to:

i. a violation of the Terms by the User;

ii. any deletions, additions, insertions or alterations to, or any unauthorised use of, the Facility by the User;

iii. any misrepresentation or breach of representation or warranty made by the User contained herein;

iv. any breach of any covenant or obligation to be performed by the User hereunder;

v. any loss incurred by or threatened to be incurred by NPCI/RBI and/or any regulatory proceeding arising out of or in connection with the User's use of the Facility.

10. Assignment

ICICI Bank shall be entitled to sell, assign, securitise or transfer ICICI Bank's rights and obligations under these Terms and any security in favour of ICICI Bank (including all guarantee[s]) to any person of ICICI Bank's choice in whole or in part and in such manner and on such terms and conditions as ICICI Bank may decide. Any such sale, assignment, securitisation or transfer shall conclusively bind the User and all other persons. The User, their successors and assigns are bound by these Terms. However, the User shall not be entitled to transfer or assign any of their rights and obligations under these Terms.

11. Termination and Suspension

11.1. The User may request for termination of the UPI Facility anytime by giving a prior written notice of at least 15 days to ICICI Bank. The User will remain responsible for all the transactions made through the UPI Facility until the time of such termination.

11.2. ICICI Bank may withdraw or terminate the UPI Facility anytime either entirely or with reference to a specific UPI Facility without assigning any reasons whatsoever. ICICI Bank may suspend or terminate the UPI Facility without prior notice if the User has breached any of these Terms.

11.3. ICICI Bank may suspend or terminate the UPI Facility anytime without assigning any reason whatsoever without any prior notice upon the request of WhatsApp.

12. Miscellaneous

12.1. The laws of India shall govern these terms and conditions and/or the operations in the Account(s) maintained with ICICI Bank. Any legal action or proceedings arising out of these Terms shall be brought in the courts or tribunals at Mumbai in India.

12.2. ICICI Bank has the absolute discretion to amend or supplement any of the Terms as stated herein at any time and will endeavour to give prior notice of 15 days for such changes wherever feasible. By using the new services, the User shall be deemed to have accepted the changed terms and conditions. Notices under these Terms may be given in writing by delivering them by hand, or on ICICI Bank's website www.icicibank.com, or by sending them by post to the last address given by the User and, in the case of ICICI Bank, to its corporate office address.

12.3. Notice and instructions will be deemed served 7 days after posting or upon receipt in the case of hand delivery, cable, telex or facsimile.

HDFC Bank's Payment Service Terms

These terms and conditions shall be in addition to HDFC Bank Privacy Policy.

To read HDFC Bank Privacy Policy, click here.

The user of this HDFC Bank UPI facility (the “User”) should have his mobile number registered with the Bank and should have existing relationship with his/her Bank for availing this Facility/Service, using HDFC Bank UPI facility.

The Facility/Service shall be made available only to the User satisfying the eligibility criteria and shall be provided at the sole discretion of HDFC Bank Ltd and may be discontinued by HDFC Bank Ltd at any time without notice.

The User shall be solely responsible and liable:

1. For the accuracy of any personal or other information provided for availing this Facility/Service.

2. For Pay or Collect requests initiated through HDFC Bank UPI facility.

3. To comply with the applicable laws, rules and regulations governing such funds transfers as stipulated by the Reserve Bank of India, from time to time.

4. For all loss, cost and damage, if he/she has breached the terms and conditions contained herein and in the HDFC Bank Mobile Banking Policy.

HDFC Bank Ltd shall not be held responsible and liable for any loss, cost and damage suffered by the User due to disclosure of his personal or other information to a third party including but not limited to statutory/regulatory authority by HDFC Bank Ltd for whatsoever reason, e.g., participation in any telecommunication or electronic clearing network in compliance with a legal or regulatory directive for statistical analysis or for credit rating or for any legal or regulatory compliance.

Axis Bank's Payment Service Terms

These terms and conditions form the contract between the User and the Axis Bank and shall be in addition to and not in derogation of other terms and conditions of any account or any other facility/services offered by the Bank and/or such other terms and conditions as may be specified by the Bank.

Definitions:

The following words and phrases shall have the meanings set out herein below in this document unless repugnant to the context:

“Application” or “Mobile Payment Application” refers to ‘WhatsApp’ mobile application by WhatsApp Inc that has tied up with Axis Bank for Unified Payment Interface services, which can be downloaded from Google Play store or Apple Store to avail UPI Services through this mobile application.

"Account(s)" shall mean an operative bank account maintained by the User with Axis Bank or any other Bank Account which User provides at the time of authentication process of Application, for availing the facility which is being offered.

“Account Holder” shall mean a User holding an Account, excluding Non-Resident Indians, Corporate Account Holders and Foreign Account Holders.

"Bank" and "Axis Bank" shall mean Axis Bank Limited, a company incorporated under the Companies Act 1956 and licensed as a bank under Banking Regulation Act, 1949 having its registered office at 'Trishul', 3rd Floor, Opposite Samartheshwar Temple, Law Garden, Ellis Bridge, Ahmedabad 380 006, Gujarat and corporate office at 131, Maker Towers 'F', Cuffe Parade, Mumbai. This term shall be inclusive of any 'affiliates' of the Bank which shall mean and include any company which a holding company or a subsidiary of ; a person under the control of the Bank or any person in which the bank has a direct/beneficial interest in more than 26% of the voting securities of such person. For the purpose of this definition, "control", when used with respect to any person would mean the power to direct the management and policies of such

person, directly or indirectly, whether through the ownership of the vote carrying securities, by contract or otherwise howsoever; and "person" would mean a company, corporation, a partnership, trust or any other entity or organization or other body whatsoever.

“Debit Card” shall means and includes the debit card issued to the User in respect of an operative bank account maintained by the User with Axis Bank or any other Bank Account.

"Facility" shall mean UPI services offered by Axis Bank through WhatsApp to facilitate User to send or receive money via UPI platform, through said Mobile Application.

“Issuing Bank” shall mean member banks participating in UPI network to identify the bank account basis Mobile No in case of customer is registering through any PSP App.

"Mobile Phone Number" shall mean the mobile number of the User used during registration for Mobile/SMS Banking via secured channel with Axis Bank or for the Whatapp Application, for the purpose of availing the facility.

“UPI” shall mean unified payments interface is a service provided by NPCI that allows transfer of money using a virtual address (UPI ID) that is mapped to an account of the User after complete validation.

“NPCI” shall mean National Payment Corporation of India. The funds transfer feature (send and ask) is provided using UPI service of NPCI.

“Virtual Address/UPI ID” shall mean an identifier that can be uniquely mapped to an individual account using a translation service.

"Mobile Phone" shall mean a valid SIM card enabled smartphone (running on Android operating system/ iphone), which is owned by the User.

"Personal information" shall mean any information about the User provided by the User to and obtained by Axis Bank in relation to the facility.

“Services” shall mean UPI services offered by Axis Bank under the said facility on WhatsApp Application.

“Transaction” shall mean the fund transfer service to send or receive money; offered under the said facility on WhatsApp application.

"User" shall mean an Account Holder of Axis Bank as well as any other person (not necessary having any relationship with Bank) who has downloaded the WhatsApp application and who is eligible for availing fund transfer facility to send or receive money offered thereunder.

For the purposes of this document, all reference to the User in masculine gender shall be deemed to include feminine gender also.

Eligibility and Usage:

This facility shall be available to the Users in India, using WhatsApp Application. The User should have his/her Mobile Phone Number registered with his/her Bank for SMS/Mobile Banking and should have existing relationship with his/her Bank for availing this Facility and services thereunder, using this Mobile Payment Application.

This facility shall be made available only to the Users satisfying the eligibility criteria and shall be provided at the sole discretion of Axis Bank and may be discontinued by Axis Bank at any time, with or without prior intimation to the Users.

The User understands and accepts that any other condition that is a pre-requisite to access and avail benefits under the facility, including, but not limited to a Mobile Phone, Data Connection, etc. will be the sole responsibility of the User.

Authorization:

The User irrevocably and unconditionally authorizes Axis Bank to access his Account and the Personal details registered while authentication of Application for availing the service including effecting Banking or other transactions of the user through the facility.

The User expressly authorizes Axis Bank to disclose to the service provider or any other third party, all user information in its possession, as may be required by them to provide the services offered under the said facility to the User.

The authority to record the User’s details and transaction details is hereby expressly granted by the User to Axis Bank. All records generated by the transactions arising out of use of the facility, including the time of the transaction, beneficiary details, etc; recorded shall be conclusive proof of the genuineness and accuracy of the transactions.

The User authorizes Axis Bank to send any message or make calls to his mobile phone Number to enquire about any transaction/UPI related services and/or to inform him about any promotional offers including information regarding Banks' new products either now available or which Axis Bank may come up with in the future, or any other message that Axis Bank may consider appropriate to the User.

The User irrevocably and unconditionally agrees that such calls or messages made by the Axis Bank and/or its Agents shall not be construed as a breach of the privacy of the User and shall not be proceeded against accordingly.

The User authorizes Axis Bank to send any rejection message or to reject any transaction/request if it finds that the request sent by the User is not as per the requirements stipulated by Axis Bank for availing the facility.

Axis Bank shall make all reasonable efforts to ensure that the User’s information is kept confidential. Axis Bank, however, shall not be responsible for any divulgence or leakage of confidential User information.

The User expressly authorizes Axis Bank to carry out all request(s) or transaction(s) for and/or at the request of the User through WhatsApp Application and the Bank shall solely rely upon

authenticity of any request or transaction purporting to have been received from the User through WhatsApp Application.

Liabilities and Responsibilities of the User:

1. The User shall be responsible for the accuracy of any information provided by the user for availing the facility.

2. The USER shall be solely responsible for fund transfer through the Facility to the correct Beneficiary/ virtual address.

3. The USER shall also be responsible to comply with the applicable Anti-Money Laundering (AML) norms governing such funds transfers as stipulated by Reserve Bank of India ("RBI"), from time to time.

4. The USER shall be liable and responsible in case of any discrepancy found in the information provided by him for availing fund transfer service offered through the Facility.

5. If, the USER suspects that, there is an error in the information supplied by Axis Bank, he shall inform the Bank immediately. Axis Bank will endeavor to correct the error promptly wherever possible on a best effort basis.

6. Axis Bank shall not be held liable for any loss suffered by the User due to disclosure of the Personal information to any service provider or third party by the Bank, for reasons including but not limited to participation in any telecommunication or electronic clearing network, in compliance with any legal or regulatory directives, for statistical analysis or for credit rating or for any legal or regulatory compliance.

7. The User shall be solely responsible for protecting his Mobile Phone and UPI PIN for the use of the said facility.

8. The User shall be liable to the Bank for any kind of unauthorized or unlawful use of any of the above mentioned UPI PIN /passwords or of the said Facility or any fraudulent or erroneous instruction given and any financial charges thus incurred shall be payable by the User only.

9. The User accepts that for the purposes of the said facility any transaction emanating from the Mobile Phone Number registered by User shall be assumed to have initiated by the User at his sole discretion.

10. It is the sole responsibility of the User to request the Bank, to suspend the said facility due to change of his registered Mobile Phone Number or if his Mobile Phone has been lost or has been allotted to some other person. The User shall also be obliged to inform the Bank, if any, unauthorized transaction in his account, of which he has knowledge.

11. It shall be the responsibility of the User to update him with regard to any information relating to the services as Axis Bank may decide to provide certain other additional

services under the said facility. Axis Bank shall not be responsible for any disregard on the part of the User.

12. The User shall be liable for all loss if he has breached the Terms and conditions contained herein and other applicable terms & conditions or contributed or caused the loss by negligent actions or a failure on his part to advise Axis Bank within a reasonable time about any unauthorized access made on his behalf in the WhatsApp Application.

13. The User shall agree that by use of this facility, he shall be deemed to have agreed to all the above terms and conditions and such terms and conditions shall be binding on me/us in the same manner as if he has agreed to the same in writing.

Terms of Service:

These terms & conditions are in addition to the general terms & conditions of any account or any other facility provided by Axis Bank to its Customers.

1. This facility is available only to the User having a bank account with any bank in India providing Immediate Payment Service (IMPS), Unified Payment Interface (UPI), including the fund transfer service.

2. User shall register him for using the Application in such manner and through such modes as may be specified and made available by WhatsApp from time to time for availment and use of the facility.

3. Axis Bank reserves right to charge the User for the services offered under the said facility.

4. This facility will be provided by Axis Bank at the request of the User to enable them to Send or receive the funds through Application to the accounts/virtual addresses added in the application based on the instructions received from User.

5. The User irrevocably and unconditionally authorizes Axis Bank to debit or Credit his account/s with the Bank registered for availing the facility.

6. User agrees and confirms that, for the purpose of availing said facility :

   a) User has to add his existing account maintained with Axis Bank or any other Bank, to the WhatsApp application.

   b) User has to select the appropriate bank details where his account is maintained, for the purpose of adding his account to WhatsApp application. The account details will be fetched by the Axis Bank through WhatsApp application via NPCI and the Issuing bank, basis the mobile number shared by User. The account details which will be fetched by the Bank will be displayed to the User on his mobile phone/device in the message format.

   c) After the successful account addition in the WhatsApp application, the User has to only authorize the transaction by entering the UPI PIN set-up by said User. This UPI PIN

will be set-up by the User directly on the NPCI library and Axis bank would not be able to read or copy such UPI PIN, thus Axis Bank will not be responsible to maintain the confidentiality of such UPI PIN.

d) The User should act in good faith, exercise reasonable care and diligence and shall be solely responsible for the confidentiality of his account details, debit card details, OTP or UPI PIN and any personal information ("credentials"). User acknowledges, represents and confirms that his credentials are personal to the him and the User shall ensure at all times to keep the same confidential and Axis Bank shall not be held liable or responsible if the User discloses his credentials to any third party in any manner whatsoever or authorizes any third party to operate account or hands over his WhatsApp application or if third party changes/modifies the credentials in the WhatsApp application due to disclosure of such credentials by the User or misuse the WhatsApp application permitted by User to use by third party. Therefore, Bank shall not be held liable or responsible in case of any details including UPI PIN are compromised by User and/or any misuse of WhatsApp application by third party, in such case the User shall be solely liable and responsible and shall keep Axis Bank indemnified, harmless and absolved from any liability in this regard including from any loss, cost, penalty, charges, including legal fees/charge, etc.; which may cause to Axis Bank due to User's disclosure of his credentials/UPI PIN to any third party/person or any misused thereof in any manner whatsoever including the misuse of WhatsApp Application by third party. The User shall be solely liable and responsible, in case if the said details are compromised by the Customer knowingly or unknowingly, in any manner whatsoever.

e) Axis Bank account and Non Axis Bank account details of the User would be stored at Axis Bank server database to the extant details provided by NPCI as per NPCI guidelines.

f) User shall adhere to the limit set Axis Bank for making any fund transfer under said facility.

7. For the purpose of availing this facility, User shall take all necessary precautions to prevent unauthorized and illegal use of Application and services offered through the facility.

8. The User will be required to register his details including bank account details after downloading the Application to Send and Receive the funds through said facility.

9. The User shall be responsible for maintaining the confidentiality of UPI PIN/ OTP/Code/password and for all the consequences which may arise due to use or misuse of such UPI PIN/OTP/Passcode/password.

10. The User shall be responsible for any and all the fund transferred to beneficiaries at their request or received by using the Facility.

11. The User shall be liable for all loss caused due to negligent actions or a failure on his part to immediately notify Axis Bank within a reasonable time, about any unauthorized

use/access made on his behalf in the Application or misuse of UPI PIN/ OTP/Passcode/password or any other breach of security regarding the facility, of which he has knowledge.

12. The User irrevocably and unconditionally authorise Axis Bank to access all the necessary information for effecting transactions executed by him under the facility and to share his necessary information with any third parties for the purpose of accepting/ executing such requests.

13. Axis Bank may keep records of the transactions in any form it wishes. In the event of any dispute, Bank's records shall be binding as the conclusive evidence of the transactions carried out through the said Application.

14. The User shall not to use/access the Facility and/or services offered through the same in any manner other than as authorized by Axis Bank. In case the User uses the Facility for any purpose which is illegal, improper or which is not authorised under these terms /other specified terms & conditions then Axis Bank has a right to take all reasonable measures in order to prevent such unauthorised access by the User.

15. The User confirms that, any instructions given by him shall be effected only after validation of authentic UPI PIN/ OTP/Passcode/Password used by him for availing such facility.

16. The User agrees and confirms that, once the transaction is materialized, any stop-payment instructions given by him cannot be accepted and acted upon by Axis Bank.

17. The User shall while utilizing the facility ensure that:

    a) he has authority to access and avail the services obtained and shall duly comply with the applicable laws and regulations prevailing in India.

    b) he shall provide Axis Bank with such information and/or assistance as is required by Axis Bank for the performance of the service and /or any other obligations of Axis Bank under this facility.

    c) he shall be responsible for providing the accurate and authentic information/instructions to Axis Bank for availing such facility.

    d) he shall not at any time provide to any person, with any details of accounts held by him with Axis Bank or any other Bank including the passwords, account number which are allotted, from time to time.

18. The User acknowledges that, the services offered by Axis Bank under the said facility shall be availed by him at his own risk and these risks shall include the following risks:

    a) any technical error, failure, glitch, network failure, legal restraints and other reasons which is beyond control of Axis Bank and for which Axis Bank shall not hold in any

manner.

b) any loss, damages, etc. that may be incurred/suffered by User, for the reason that the information provided by him turns out to be wrong/incorrect/inaccurate, for which Axis Bank shall not be held responsible.

c) for the performance of any service provider/other third party/entity involved in the process; and for any loss or damage incurred or suffered by User for any error, defect, failure or interruption of the service or consequences arising out of delayed fund transfer.

d) any loss of damage arising or resulting from delay in transmission delivery or non-delivery of online/electronic instructions or any mistake, omission or error in transmission or delivery thereof or in decrypting the instructions from any cause whatsoever or from its misinterpretation received or any act or even beyond control of Axis Bank.

e) The technology for enabling the transfer of funds and the other services offered by Axis Bank under the said facility could be affected by virus or other malicious, destructive or corrupting code, program or macro. It may be possible that the said Application/ server of Axis Bank may require maintenance and during such time it may not be possible to process the request/transaction of the Users. This could result in delays in the processing of instructions or failure in the processing of instructions and other such failures and inability. User understand that Axis Bank disclaims all and any liability, whether direct or indirect, whether arising out of loss or otherwise arising out of any failure or inability by the Bank to honour any User instruction for whatsoever reason.

f) The User shall be entering his sensitive information, OTP or UPI PIN in NPCI library for authorizing any transaction initiated by the User and the final authorisation of any such transaction which will be done by the Issuing bank only after confirmation received from the Issuing bank from the User. User agrees and confirms that, he shall be alone responsible for use/disclosure of his details as mentioned herein, for initiating/authorizing any transaction through the Facility via NPCI and the Issuing bank and shall keep Axis Bank indemnified, harmless and absolved from any liability in this regard including from any loss, cost, penalty, charges, including legal fees/charge, etc; which may cause to Axis Bank due to use/disclosure of User's details mentioned herein by User, over NPCI Library and to the Issuing bank for seeking their confirmations, in respect of any transaction initiated/authorized by the User. Therefore, the User shall be solely liable and responsible, in such case if any loss, cost, penalty, charges, including legal fees/charge, etc; incurred to the User, in any manner whatsoever in this regard.

19. The User agrees that Axis Bank shall assume no responsibility in respect of:

a) Transactions carried out under the service in good faith relying on User's instructions.

b) Not carrying out transactions where Axis Bank has reason to believe in its sole discretion that the instructions are not genuine or are otherwise unclear, improper, vague or doubtful.

c) For any loss or damage incurred or suffered by User for any error, defect, failure or interruption of the service or consequences arising out of delayed transfer/remittance and for any reason which is beyond control of Axis Bank.

d) User acknowledges and agrees that Axis Bank remains a mere facilitator for this service and that Axis Bank does not warrant or claim any responsibility for this facility nor does Axis Bank endorse any such service and/or its standing or reputation whatsoever and Axis Bank shall not liable for any deficient or bad services in any manner whatsoever and for any loss, whatsoever that User may suffer. The risk in this regard is entirely on the User.

e) Unauthorized access of any third party to the information/instructions given by user to third party using said facility.

f) For any direct, indirect or consequential damages occurred to User while availing this facility, arising out of any error in the facility and which are beyond control of Axis Bank.

g) When Axis Bank acted in good faith.

h) Any loss, damage, liability caused or suffered by User due to disclosure of all information of confidential nature

i) In respect of UPI System, as the connectivity to UPI System is extended to the Axis Bank only and any/all secure credentials that are required to process the transaction shall be provided by the User which will be captured and encrypted as per the construct and requirement of UPI only, by NPCI. Therefore, the secure mechanism or interface will be extended by NPCI through UPI system to Axis Bank including but not limited to secured credentials or sensitive information such as User's UPI PIN, OTP in encrypted manner.

20. User agrees that, charges if any for the facility offered by Axis Bank will be at the sole discretion of Axis Bank and Axis Bank is at the liberty to withdraw/modify/vary the same from time to time, without giving any notice to me/us.

21. The Bank at its sole discretion reserves the exclusive right to block, temporarily or permanently, virtual payment address(es) of the User, if it identifies that the user-name or words used in the virtual payment address(es), as misleading, offensive, prohibited, promotional or brand-names, trademark or copyright pertaining to any third party, with or without prior intimation to the User, for which the Bank shall not be held liable or responsible in any manner whatsoever.

22. The User agrees that, if his bank account is closed/ blocked pursuant using the facility, for any reason whatsoever, user shall settle the issue directly with his Bank and shall not hold Axis Bank any way responsible for the same.

23. The User shall remain responsible for any and all the transactions made through the facility. Axis Bank may withdraw or terminate the facility anytime or in case of breach of terms by me/us without a prior notice; or if Axis Bank learns of demise, bankruptcy or lack of legal capacity of the User or for any reason whatsoever.

24. The User agrees that, User is not entitled to consolidate amounts available in his different bank accounts maintained with his bank(s) for making payments using said Facility. Therefore, at one given point of time User is entitled to use funds available in particular bank account which he has chosen for making payment using the said Facility.

25. The User agrees to indemnify, defend and hold harmless Axis Bank and its directors, officers, owners, agents, co-branders or other partners, employees, information providers, licensors, licensees, consultants, contractors and other applicable third parties (collectively "Indemnified Parties") from and against any and all claims, demands, causes of action, debt or liability, including reasonable attorney's fees, and costs incurred by the Indemnified Parties arising out of, related to, or which may arise from:

    a) any breach or non-compliance by User of any term of these Terms of Service or any other additional terms & conditions and policies of Axis Bank;

    b) any dispute or litigation caused by Users actions or omissions;

    c) any negligence or violation or alleged violation of any law or rights of a third party

26. Axis Bank may provide the any services through this Facility, directly or through its associates or contracted service providers on its behalf.

Limitations on transactions

Transaction limits as prescribed by the regulator for the UPI facility shall be applicable to each User

Indemnity:

In consideration of Axis bank agreeing to provide the Facility and/or services to the User, the User shall, at his own expense, hereby irrevocably agrees, to indemnify and keep Axis bank its directors and employees, representatives, agents and/or affiliates (hereinafter referred to as “the related parties”), as the case may be, indemnified and harmless, at all times hereafter, from all losses, damages, costs, legal fees, charges and expenses and consequences whatsoever, on full indemnity basis, suffered or incurred or likely to suffer by Axis bank or the related parties on account of any claims, actions, suits or otherwise instituted by the User, or any third party whatsoever, arising out of or in connection with the use of the Facility and any and all transactions initiated by the use of the Facility, whether with or without the knowledge of the User, or whether the same have been initiated bona fide or otherwise which transactions, the User hereby acknowledges, Axis bank or the related parties has processed on the User’s transaction instructions and authority of the User in accordance with these terms and conditions and other applicable specific terms and conditions, as the case may be. The User further agrees

and confirms that this indemnity shall remain valid and subsisting and binding upon the User notwithstanding partial withdrawal of the Facility.

The User will pay Axis Bank and /or the related parties such amount as may be determined by Axis Bank and/or the related parties to be sufficient to indemnify it against any such loss or expenses even though they may not have arisen or are contingent in nature.

The User agrees to pay any and all costs, damages and expenses, including, but not limited to, reasonable attorneys' fees and costs awarded against it or otherwise incurred by or in connection with or arising from any such claim, suit, action or proceeding attributable to any such claim.

Confidentiality and Disclosure:

To the extent not prohibited by applicable law, the Axis bank shall be entitled to transfer any information relating to the User and/or any other information given by the User for utilization of the Facility to and between its branches, representative offices, affiliates, representatives, auditors and third parties selected by Axis bank, wherever situated, for confidential use in and in connection with the Facility. Further, Axis bank shall be entitled at any time to disclose any and all information concerning the User within the knowledge and possession of Axis bank to any other bank/association/financial institution or any other body. This clause will survive the termination of this agreement.

Accuracy of Information:

The User takes the responsibility for the correctness of the information supplied by him to the Bank through the use of the said facility or through use of the Application or by any other means.

The User herein accepts that in case of any discrepancy in the information provided by him with regard to this facility the onus shall lie upon the User only and thus agrees to furnish accurate information at all times to Axis Bank. If the User suspects that there is an error in the information supplied by Axis Bank to him, he shall inform the Bank immediately. Axis Bank will endeavor to correct the error promptly wherever possible on a best effort basis. Axis Bank shall also not be responsible for any incidental error which occurs inspite of necessary steps being taken by the Bank to ensure the accuracy of the information provided to the User and the User shall not have any claim against Axis bank in an event of any loss/damage suffered by the User as a consequence of the inaccurate information provided by the Bank.

Termination:

Axis Bank may, at its discretion, withdraw temporarily or terminate the Facility, either wholly or in part, at any time without giving prior notice to the User. Axis Bank may, without prior notice, suspend the Facility at any time during which any maintenance work or repair is required to be carried out or in case of any emergency or for security reasons, which require the suspension of the Facility. The closure of the account of the User will automatically terminate the Facility. Axis Bank may suspend or terminate Facility without prior notice if the User has breached these terms and conditions or Axis Bank learns of the death, bankruptcy or lack of legal capacity of the User. Except as otherwise provided by the applicable law or regulation, Axis bank reserves the right to terminate the Facility and/or expand, reduce or suspend the transactions allowed using

this Facility, change the process and transaction limits associated with this Facility based on security issues, at any time, without any prior notice to the User.

Disclaimers:

Axis bank shall be absolved of any liability in case:

The User fails to avail the facility due to force majeure conditions including but not limited to not being in the required geographical range or any other reason including natural calamities; legal restraints any technical lapses in the telecommunication network or any other reasons beyond the actual control of Axis Bank, the Bank shall not be accountable. Also the Bank is herein absolved of any kind of liability arising due to a loss; direct or indirect incurred by the User or any other person due to any lapse in the facility owing to the above-mentioned reasons.

The User is acting in good faith on any transaction instructions received by Axis bank;

There is any unauthorized use of the User's UPI PIN, Password, Passcode, OTP or Mobile Phone or Mobile Phone Number for any fraudulent, duplicate or erroneous transaction instructions given by use of the User's UPI PIN, Password, Passcode, OTP or Mobile Phone or Mobile Phone Number;

There is loss of any information during processing or transmission or any unauthorized access by any other person or breach of confidentiality.

There is any lapse or failure on the part of the service providers or any third party affecting the said facility and that Axis bank makes no warranty as to the quality of the service provided by any such service provider or any third party.

Axis Bank does not warrant the confidentiality or security of the messages or notifications whether personal or otherwise transmitted through the Application in respect of the said Facility. Axis Bank makes no warranty or representation of any kind in relation to the system and the network or their function or performance or for any loss or damage whenever and howsoever suffered or incurred by the User or by any person resulting from or in connection with the Facility.

Axis Bank, its directors and employees, agent or contractors, shall not be liable for and in respect of any loss or damage whether direct, indirect or consequential, including but not limited to loss of revenue, profit, business, contracts, anticipated savings or goodwill, loss of use or value of any equipment including software, whether foreseeable or not, suffered by the User or any person howsoever arising from or relating to any delay, interruption, suspension, resolution or error of the Bank in receiving and processing the request and in formulating and returning responses or any failure, delay, interruption, suspension, restriction, or error in transmission of any information or message to and from the telecommunication equipment of the User and the network of any service provider and the Bank's system or any breakdown, interruption, suspension or failure of the telecommunication equipment of the User, the Bank's system or the network of any service provider and/or any third party who provides such services as is necessary to provide the Facility.

Notwithstanding anything in the contrary provided in this terms and conditions, Axis Bank shall not be involved in or in any way liable to the User for any dispute between the User and a cellular services provider or any third party service provider (whether appointed by the Bank in that behalf or otherwise).

Any loss incurred by the user due to use of the facility by any other person with an express or implied permission of the User. Axis bank shall not be held responsible for the confidentiality, secrecy and security of the personal or account information being sent through the facility for effecting the User's instructions.

Axis bank shall not be held liable for any loss suffered by the user due to disclosure of the personal information to a third party by the Bank, for reasons inclusive but not limited to participation in any telecommunication or electronic clearing network, in compliance with a legal directive, for statistical analysis or for credit rating.

Modification / Alterations To The Facility: Axis Bank reserves the absolute discretionary right to make any amendments in the given terms and condition at any time as it may deem fit without any prior notice to the User. Any such amendment shall be communicated to the User by displaying on the website http://www.axisbank.com (http://www.axisbank.com/) and the User shall be bound by such amended terms and conditions.

Communication:

Axis Bank and the User may give notice under these terms and conditions electronically to the mailbox of the User (which will be regarded as being in writing) or in writing by delivering them by hand or by sending them by post to the last address given by the User and in case of Axis Bank at its office at Service Quality Department, Axis Bank Limited, Corporate Office, Bombay Dyeing Mills Compound,Pandurang Budhkar Marg, Worli, Mumbai - 400025, Tel: (022) 2425 2525. In addition, Axis Bank shall also provide notice of general nature regarding the facility and terms and conditions, which are applicable to all Users of the Facility, on the website http://www.axisbank.com and/ or also by means the customized messages and notifications sent to the User over his Mobile Phone Number as short messaging service ("SMS"). In addition Axis bank may also publish notices of general nature, which are applicable to all users of the facility. Such notices will be deemed to have been served individually to each User.

Governing law and jurisdiction:

The construction, validity and performance of these terms and conditions shall be governed in all respects by the laws of India. The parties hereby submit to the exclusive jurisdiction of the competent Courts at Mumbai, India which courts shall have jurisdiction in the matter to the exclusion of any other courts, irrespective of whether such other courts have similar jurisdiction in the matter. Axis Bank is absolved of any liability arising, direct or indirect, for non-compliance with the laws of any country other than India where the facility is accessible.

Privacy Policy

The user adheres to the Privacy policy of the bank that is detailed out in https://www.axisbank.com/privacy-policy.

YouTube
https://www.youtube.com/static?template=terms

Our Terms of Service have been updated.

This summary is designed to help you understand some of the key updates we've made to our Terms of Service (Terms). We hope this serves as a useful guide, but please ensure you read the new Terms in full.

Welcome to YouTube!

This section outlines our relationship with you. It includes a description of the Service, defines our Agreement, and names your service provider. Key updates:

- Service Provider. Your service provider is now Google LLC.
- Policies. We have added a link to the Policy, Safety and Copyright Policies, and our Advertising on YouTube Policies, which all form part of the Agreement. These are the policies that underpin our Community Guidelines, and we wanted to make sure to call out this detail to you upfront in our Terms.
- Affiliates. To ensure you understand exactly who we mean when we talk about our group companies, we've included a definition of our "Affiliates", meaning the companies in the Alphabet corporate group.

Who May Use the Service?

This section sets out certain requirements for use of the Service, and defines categories of users. Key updates:

- Age Requirements. We have stated the specific age requirements for your country, reflecting our Google wide policies, and included a notice that, if you are a minor in your country, you must always have your parent or guardian's permission before using the Service.
- Parental Permission. We've added a section to explain your responsibility if you allow your child to use YouTube.
- Businesses. Our Terms now make clear that, if you are using the Service on behalf of a company or organisation, that business accepts this Agreement.

Your Use of the Service

This section explains your rights to use the Service, and the conditions that apply to your use of the Service. It also explains how we may make changes to the Service. Key updates:

- Google Accounts and YouTube Channels. We've provided details about which features of the Service can be accessed without a Google account or YouTube channel, and which features require one.

- Your Information. We haven't made any changes to the way we treat your information. You can read about our privacy practices by reviewing the Privacy Policy and YouTube Kids Privacy Notice. As a reminder, you can always review your privacy settings and manage your data and personalisation by visiting your Google Account.

- Restrictions. We have updated this section to reflect our requirements around contests, and to include a prohibition on manipulating metrics.

- Service Changes. We have improved our Terms to be more transparent about why we might need to make changes to the Service, and provided a commitment to give you notice when those changes might affect you.

Your Content and Conduct

This section applies to users who provide Content to the Service. It defines the scope of the permissions that you grant by uploading your Content, and includes your agreement not to upload anything that infringes on anyone else's rights. Key updates:

- License. We've clarified the content license you grant us to make it easier to understand. We're not asking for additional permissions and there's no difference in how we're using your content.

- Duration. We have removed the right for YouTube to use your comments in perpetuity.

- Removals. We have included a link to the tools you will need to remove your content, as well as a clear description about why we might need to take down content, and how to appeal removals.

- Analyzing Content. We may automatically analyze content on YouTube, to help detect abuse and keep the platform safe.

Account Suspension and Termination

This section explains how you and YouTube may terminate this relationship. Key updates:

- Terminations. Our Terms now include more details about when we might need to terminate our Agreement with bad actors. We provide a greater commitment to give notice when we take such action and what you can do to appeal if you think we've got it wrong. We've also added instructions for you, if you decide you no longer want to use the Service.

About Software in the Service

This section includes details about software on the Service. Key updates:

- Software Licences. We've made the software licence we grant you more specific, and included some details around open source.

Other Legal Terms

This section includes our service commitment to you. It also explains that there are some things we will not be responsible for. Key updates:

- Our liability. We've made changes to the disclaimers and limitations of liability in the Terms.

About this Agreement

This section includes some further important details about our contract, including what to expect if we need to make changes to these Terms; or which law applies to them. Key updates:

- Modifications. We want to give you the chance to review future material updates to these Terms.

Still have questions?

You can also find further details in our Help Center.

Terms of Service

Dated: December 10, 2019

Welcome to YouTube!

Introduction
Thank you for using the YouTube platform and the products, services and features we make available to you as part of the platform (collectively, the "Service").

Our Service

The Service allows you to discover, watch and share videos and other content, provides a forum for people to connect, inform, and inspire others across the globe, and acts as a distribution platform for original content creators and advertisers large and small. We provide lots of information about our products and how to use them in our Help Center. Among other things, you can find out about YouTube Kids, the YouTube Partner Program and YouTube Paid Memberships and Purchases (where available).You can also read all about enjoying content on other devices like your television, your games console, or Google Home.

Your Service Provider

The entity providing the Service is Google LLC, a company operating under the laws of Delaware, located at 1600 Amphitheatre Parkway, Mountain View, CA 94043 (referred to as

“YouTube”, “we”, “us”, or “our”). References to YouTube’s “Affiliates” in these terms means the other companies within the Alphabet Inc. corporate group (now or in the future).

Applicable Terms
Your use of the Service is subject to these terms, the YouTube Community Guidelines and the Policy, Safety and Copyright Policies which may be updated from time to time (together, this "Agreement"). Your Agreement with us will also include the Advertising on YouTube Policies if you provide advertising or sponsorships to the Service or incorporate paid promotions in your content. Any other links or references provided in these terms are for informational use only and are not part of the Agreement.

Please read this Agreement carefully and make sure you understand it. If you do not understand the Agreement, or do not accept any part of it, then you may not use the Service.

Who may use the Service?

Age Requirements
You must be at least 13 years old to use the Service. However, children of all ages may use YouTube Kids (where available) if enabled by a parent or legal guardian.

Permission by Parent or Guardian

If you are under 18, you represent that you have your parent or guardian’s permission to use the Service. Please have them read this Agreement with you.

If you are a parent or legal guardian of a user under the age of 18, by allowing your child to use the Service, you are subject to the terms of this Agreement and responsible for your child’s activity on the Service. You can find tools and resources to help you manage your family’s experience on YouTube in our Help Center and through Google’s Family Link.

Businesses
If you are using the Service on behalf of a company or organisation, you represent that you have authority to act on behalf of that entity, and that such entity accepts this Agreement.

Your Use of the Service

Content on the Service
The content on the Service includes videos, audio (for example music and other sounds), graphics, photos, text (such as comments and scripts), branding (including trade names, trademarks, service marks, or logos), interactive features, software, metrics, and other materials whether provided by you, YouTube or a third-party (collectively, "Content”).

Content is the responsibility of the person or entity that provides it to the Service. YouTube is under no obligation to host or serve Content. If you see any Content you believe does not comply with this Agreement, including by violating the Community Guidelines or the law, you can report it to us.

Google Accounts and YouTube Channels
You can use parts of the Service, such as browsing and searching for Content, without having a Google account. However, you do need a Google account to use some features. With a Google account, you may be able to like videos, subscribe to channels, create your own YouTube channel, and more. You can follow these instructions to create a Google account.

Creating a YouTube channel will give you access to additional features and functions, such as uploading videos, making comments or creating playlists (where available). Here are some details about how to create your own YouTube channel.

To protect your Google account, keep your password confidential. You should not reuse your Google account password on third-party applications. Learn more about keeping your Google account secure, including what to do if you learn of any unauthorised use of your password or Google account.

Your Information
Our Privacy Policy explains how we treat your personal data and protect your privacy when you use the Service. The YouTube Kids Privacy Notice provides additional information about our privacy practices that are specific to YouTube Kids.

We will process any audio or audiovisual content uploaded by you to the Service in accordance with the YouTube Data Processing Terms, except in cases where you uploaded such content for personal purposes or household activities. Learn More.

Permissions and Restrictions
You may access and use the Service as made available to you, as long as you comply with this Agreement and applicable law. You may view or listen to Content for your personal, non-commercial use. You may also show YouTube videos through the embeddable YouTube player.

The following restrictions apply to your use of the Service. You are not allowed to:

1. access, reproduce, download, distribute, transmit, broadcast, display, sell, license, alter, modify or otherwise use any part of the Service or any Content except: (a) as expressly authorized by the Service; or (b) with prior written permission from YouTube and, if applicable, the respective rights holders;

2. circumvent, disable, fraudulently engage with, or otherwise interfere with any part of the Service (or attempt to do any of these things), including security-related features or features that (a) prevent or restrict the copying or other use of Content or (b) limit the use of the Service or Content;

3. access the Service using any automated means (such as robots, botnets or scrapers) except (a) in the case of public search engines, in accordance with YouTube's robots.txt file; or (b) with YouTube's prior written permission;

4. collect or harvest any information that might identify a person (for example, usernames), unless permitted by that person or allowed under section (3) above;

5. use the Service to distribute unsolicited promotional or commercial content or other unwanted or mass solicitations;

6. cause or encourage any inaccurate measurements of genuine user engagement with the Service, including by paying people or providing them with incentives to increase a video's views, likes, or dislikes, or to increase a channel's subscribers, or otherwise manipulate metrics in any manner;

7. misuse any reporting, flagging, complaint, dispute, or appeals process, including by making groundless, vexatious, or frivolous submissions;

8. run contests on or through the Service that do not comply with YouTube's contest policies and guidelines;

9. use the Service to view or listen to Content other than for personal, non-commercial use (for example, you may not publicly screen videos or stream music from the Service); or

10. use the Service to (a) sell any advertising, sponsorships, or promotions placed on, around, or within the Service or Content, other than those allowed in the Advertising on YouTube policies (such as compliant product placements); or (b) sell advertising, sponsorships, or promotions on any page of any website or application that only contains Content from the Service or where Content from the Service is the primary basis for such sales (for example, selling ads on a webpage where YouTube videos are the main draw for users visiting the webpage).

Reservation

Using the Service does not give you ownership of or rights to any aspect of the Service, including user names or any other Content posted by others or YouTube.

Changes to the Service

YouTube is constantly changing and improving the Service. We may also need to alter or discontinue the Service, or any part of it, in order to make performance or security improvements, change functionality and features, make changes to comply with law, or prevent illegal activities on or abuse of our systems. These changes may affect all users, some users or even an individual user. Whenever reasonably possible, we will provide notice when we discontinue or make material changes to our Service that will have an adverse impact on the use of our Service. However, you understand and agree that there will be times when we make such changes without notice, such as where we feel we need to take action to improve the security and operability of our Service, prevent abuse, or comply with legal requirements.

Your Content and Conduct

Uploading Content

If you have a YouTube channel, you may be able to upload Content to the Service. You may use your Content to promote your business or artistic enterprise. If you choose to upload Content,

you must not submit to the Service any Content that does not comply with this Agreement (including the YouTube Community Guidelines) or the law. For example, the Content you submit must not include third-party intellectual property (such as copyrighted material) unless you have permission from that party or are otherwise legally entitled to do so. You are legally responsible for the Content you submit to the Service. We may use automated systems that analyze your Content to help detect infringement and abuse, such as spam, malware, and illegal content.

Rights you Grant

You retain ownership rights in your Content. However, we do require you to grant certain rights to YouTube and other users of the Service, as described below.

License to YouTube

By providing Content to the Service, you grant to YouTube a worldwide, non-exclusive, royalty-free, sublicensable and transferable license to use that Content (including to reproduce, distribute, prepare derivative works, display and perform it) in connection with the Service and YouTube's (and its successors' and Affiliates') business, including for the purpose of promoting and redistributing part or all of the Service.

License to Other Users

You also grant each other user of the Service a worldwide, non-exclusive, royalty-free license to access your Content through the Service, and to use that Content, including to reproduce, distribute, prepare derivative works, display, and perform it, only as enabled by a feature of the Service (such as video playback or embeds). For clarity, this license does not grant any rights or permissions for a user to make use of your Content independent of the Service.

Duration of License

The licenses granted by you continue for a commercially reasonable period of time after you remove or delete your Content from the Service. You understand and agree, however, that YouTube may retain, but not display, distribute, or perform, server copies of your videos that have been removed or deleted.

Removing Your Content

You may remove your Content from the Service at any time. You also have the option to make a copy of your Content before removing it. You must remove your Content if you no longer have the rights required by these terms.

Removal of Content By YouTube

If we reasonably believe that any Content is in breach of this Agreement or may cause harm to YouTube, our users, or third parties, we may remove or take down that Content in our discretion. We will notify you with the reason for our action unless we reasonably believe that to do so: (a) would breach the law or the direction of a legal enforcement authority or would

otherwise risk legal liability for YouTube or our Affiliates; (b) would compromise an investigation or the integrity or operation of the Service; or (c) would cause harm to any user, other third party, YouTube or our Affiliates. You can learn more about reporting and enforcement, including how to appeal on the Troubleshooting page of our Help Center.

Copyright Protection

We provide information to help copyright holders manage their intellectual property online in our YouTube Copyright Center. If you believe your copyright has been infringed on the Service, please send us a notice.

We respond to notices of alleged copyright infringement according to the process in our YouTube Copyright Center, where you can also find information about how to resolve a copyright strike. YouTube's policies provide for the termination, in appropriate circumstances, of repeat infringers' access to the Service.

Account Suspension & Termination

Terminations by You
You may stop using the Service at any time. Follow these instructions to delete the Service from your Google Account, which involves closing your YouTube channel and removing your data. You also have the option to download a copy of your data first.

Terminations and Suspensions by YouTube for Cause

YouTube may suspend or terminate your access, your Google account, or your Google account's access to all or part of the Service if (a) you materially or repeatedly breach this Agreement; (b) we are required to do so to comply with a legal requirement or a court order; or (c) we believe there has been conduct that creates (or could create) liability or harm to any user, other third party, YouTube or our Affiliates.

Terminations by YouTube for Service Changes

YouTube may terminate your access, or your Google account's access to all or part of the Service if YouTube believes, in its sole discretion, that provision of the Service to you is no longer commercially viable.

Notice for Termination or Suspension

We will notify you with the reason for termination or suspension by YouTube unless we reasonably believe that to do so: (a) would violate the law or the direction of a legal enforcement authority, or would otherwise risk legal liability for YouTube or our Affiliates; (b) would compromise an investigation or the integrity or operation of the Service; or (c) would cause harm to any user, other third party, YouTube or our Affiliates. Where YouTube is terminating your access for Service changes, where reasonably possible, you will be provided with sufficient time to export your Content from the Service.

Effect of Account Suspension or Termination

If your Google account is terminated or your Google account's access to the Service is restricted, you may continue using certain aspects of the Service (such as viewing only) without an account, and this Agreement will continue to apply to such use. If you believe your Google account has been terminated in error, you can appeal using this form.

About Software in the Service

Downloadable Software
When the Service requires or includes downloadable software (such as the YouTube Studio application), you give permission for that software to update automatically on your device once a new version or feature is available, subject to your device settings. Unless that software is governed by additional terms which provide a license, YouTube gives you a personal, worldwide, royalty-free, non-assignable and non-exclusive license to use the software provided to you by YouTube as part of the Service. This license is for the sole purpose of enabling you to use and enjoy the benefit of the Service as provided by YouTube, in the manner permitted by this Agreement. You are not allowed to copy, modify, distribute, sell, or lease any part of the software, or to reverse-engineer or attempt to extract the source code of that software, unless laws prohibit these restrictions or you have YouTube's written permission.

Open Source
Some software used in our Service may be offered under an open source license that we make available to you. There may be provisions in an open source license that expressly override some of these terms, so please be sure to read those licenses.

Other Legal Terms

Warranty Disclaimer
OTHER THAN AS EXPRESSLY STATED IN THIS AGREEMENT OR AS REQUIRED BY LAW, THE SERVICE IS PROVIDED "AS IS" AND YOUTUBE DOES NOT MAKE ANY SPECIFIC COMMITMENTS OR WARRANTIES ABOUT THE SERVICE. FOR EXAMPLE, WE DON'T MAKE ANY WARRANTIES ABOUT: (A) THE CONTENT PROVIDED THROUGH THE SERVICE; (B) THE SPECIFIC FEATURES OF THE SERVICE, OR ITS ACCURACY, RELIABILITY, AVAILABILITY, OR ABILITY TO MEET YOUR NEEDS; OR (C) THAT ANY CONTENT YOU SUBMIT WILL BE ACCESSIBLE ON THE SERVICE.

Limitation of Liability

EXCEPT AS REQUIRED BY APPLICABLE LAW, YOUTUBE, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS WILL NOT BE RESPONSIBLE FOR ANY LOSS OF PROFITS, REVENUES, BUSINESS OPPORTUNITIES, GOODWILL, OR ANTICIPATED SAVINGS; LOSS OR CORRUPTION OF DATA; INDIRECT OR CONSEQUENTIAL LOSS; PUNITIVE DAMAGES CAUSED BY:

1. ERRORS, MISTAKES, OR INACCURACIES ON THE SERVICE;

2. PERSONAL INJURY OR PROPERTY DAMAGE RESULTING FROM YOUR USE OF THE SERVICE;

3. ANY UNAUTHORIZED ACCESS TO OR USE OF THE SERVICE;
4. ANY INTERRUPTION OR CESSATION OF THE SERVICE;
5. ANY VIRUSES OR MALICIOUS CODE TRANSMITTED TO OR THROUGH THE SERVICE BY ANY THIRD PARTY;
6. ANY CONTENT WHETHER SUBMITTED BY A USER OR YOUTUBE, INCLUDING YOUR USE OF CONTENT; AND/OR
7. THE REMOVAL OR UNAVAILABILITY OF ANY CONTENT.

THIS PROVISION APPLIES TO ANY CLAIM, REGARDLESS OF WHETHER THE CLAIM ASSERTED IS BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY.

YOUTUBE AND ITS AFFILIATES' TOTAL LIABILITY FOR ANY CLAIMS ARISING FROM OR RELATING TO THE SERVICE IS LIMITED TO THE GREATER OF: (A) THE AMOUNT OF REVENUE THAT YOUTUBE HAS PAID TO YOU FROM YOUR USE OF THE SERVICE IN THE 12 MONTHS BEFORE THE DATE OF YOUR NOTICE, IN WRITING TO YOUTUBE, OF THE CLAIM; AND (B) USD $500.

Indemnity

To the extent permitted by applicable law, you agree to defend, indemnify and hold harmless YouTube, its Affiliates, officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Service; (ii) your violation of any term of this Agreement; (iii) your violation of any third party right, including without limitation any copyright, property, or privacy right; or (iv) any claim that your Content caused damage to a third party. This defense and indemnification obligation will survive this Agreement and your use of the Service.

Third-Party Links
The Service may contain links to third-party websites and online services that are not owned or controlled by YouTube. YouTube has no control over, and assumes no responsibility for, such websites and online services. Be aware when you leave the Service; we suggest you read the terms and privacy policy of each third-party website and online service that you visit.

About this Agreement

Modifying this Agreement
We may modify this Agreement, for example, to reflect changes to our Service or for legal, regulatory, or security reasons. YouTube will provide reasonable advance notice of any material modifications to this Agreement and the opportunity to review them, except that modifications addressing newly available features of the Service or modifications made for legal reasons may be effective immediately without notice. Modifications to this Agreement will only apply going

forward. If you do not agree to the modified terms, you should remove any Content you have uploaded and discontinue your use of the Service.

Continuation of this Agreement
If your use of the Service ends, the following terms of this Agreement will continue to apply to you: “Other Legal Terms”, “About This Agreement”, and the licenses granted by you will continue as described under “Duration of License”.

Severance
If it turns out that a particular term of this Agreement is not enforceable for any reason, this will not affect any other terms.

No Waiver
If you fail to comply with this Agreement and we do not take immediate action, this does not mean that we are giving up any rights that we may have (such as the right to take action in the future).

Interpretation

In these terms, “include” or “including” means “including but not limited to,” and any examples we give are for illustrative purposes.

Governing Law
All claims arising out of or relating to these terms or the Service will be governed by California law, except California’s conflict of laws rules, and will be litigated exclusively in the federal or state courts of Santa Clara County, California, USA. You and YouTube consent to personal jurisdiction in those courts.

Limitation on Legal Action

YOU AND YOUTUBE AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICES MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

Effective as of December 10, 2019 (view previous version)

1 Page (1 Record)
Withheld in its Entirety
Pursuant to FOIA Exemption 5
(5 U.S.C. § 552 (b)(5))

From: Candeub, Adam
To: candeub.adam(b) (6)
Subject: FW: EO Deliverables 6/5/20
Date: Monday, June 8, 2020 9:06:52 AM
Attachments: FCC platform petition -- jurisdiction insert (002) V.3_clean.docx

---

From: Remaley, Evelyn <ERemaley@ntia.gov>
Sent: Monday, June 8, 2020 7:36 AM
To: Wolbers, Rachel <rwolbers@ntia.gov>; Candeub, Adam <acandeub@ntia.gov>; Kinkoph, Douglas <DKinkoph@ntia.gov>; May,Timothy <TMay@ntia.gov>; Wasilewski, Jim <JWasilewski@ntia.gov>; Smith, Kathy <KSmith@ntia.gov>; Brown, Milton <MBrown@ntia.gov>; Harris, Vernita D. <VHarris@ntia.gov>; Goldberg, Rafi <RGoldberg@ntia.gov>; Hall, Travis <THall@ntia.gov>; Sloan, Tim <TSloan@ntia.gov>; Zambrano, Luis <LZambrano@ntia.gov>
Subject: RE: EO Deliverables 6/5/20

Colleagues,

(b) (5) Thanks to Tim Sloan for quickly pulling this section together.

Thanks,
Evelyn

_____

Evelyn L. Remaley
Associate Administrator for Policy Analysis & Development
National Telecommunications & Information Administration
U.S. Department of Commerce
EMAIL: eremaley@ntia.gov
VOICE: 202.482.3821

From: Wolbers, Rachel <rwolbers@ntia.gov>
Sent: Sunday, June 7, 2020 8:36 AM
To: Remaley, Evelyn <ERemaley@ntia.gov>; Candeub, Adam <acandeub@ntia.gov>; Kinkoph, Douglas <DKinkoph@ntia.gov>; May,Timothy <TMay@ntia.gov>; Wasilewski, Jim <JWasilewski@ntia.gov>; Smith, Kathy <KSmith@ntia.gov>; Brown, Milton <MBrown@ntia.gov>; Harris, Vernita D. <VHarris@ntia.gov>; Goldberg, Rafi <RGoldberg@ntia.gov>; Hall, Travis <THall@ntia.gov>; Sloan, Tim <TSloan@ntia.gov>; Zambrano, Luis <LZambrano@ntia.gov>
Cc: Shell, Charryse <cshell@ntia.gov>
Subject: Re: EO Deliverables 6/5/20

12-2 would be best for Vernita and me as we have a WTSA call at 4pm. Thanks for setting up!

Rachel Wolbers

Department of Commerce
National Telecommunications & Information Administration
(b) (6)

From: Remaley, Evelyn <ERemaley@ntia.gov>
Sent: Friday, June 5, 2020 8:01 PM
To: Candeub, Adam <acandeub@ntia.gov>; Kinkoph, Douglas <DKinkoph@ntia.gov>; May,Timothy <TMay@ntia.gov>; Wasilewski, Jim <JWasilewski@ntia.gov>; Smith, Kathy <KSmith@ntia.gov>; Brown, Milton <MBrown@ntia.gov>; Harris, Vernita D. <VHarris@ntia.gov>; Goldberg, Rafi <RGoldberg@ntia.gov>; Hall, Travis <THall@ntia.gov>; Sloan, Tim <TSloan@ntia.gov>; Zambrano, Luis <LZambrano@ntia.gov>; Wolbers, Rachel <rwolbers@ntia.gov>
Cc: Shell, Charryse <cshell@ntia.gov>
Subject: Re: EO Deliverables 6/5/20

We are happy to set up a bridge if folks can respond re which of Adam's time slots are best. Copying Charryse so she can help coordinate. Thanks, All!

From: Candeub, Adam <acandeub@ntia.gov>
Sent: Friday, June 5, 2020 6:26:10 PM
To: Remaley, Evelyn <ERemaley@ntia.gov>; Kinkoph, Douglas <DKinkoph@ntia.gov>; May,Timothy <TMay@ntia.gov>; Wasilewski, Jim <JWasilewski@ntia.gov>; Smith, Kathy <KSmith@ntia.gov>; Brown, Milton <MBrown@ntia.gov>; Harris, Vernita D. <VHarris@ntia.gov>; Goldberg, Rafi <RGoldberg@ntia.gov>; Hall, Travis <THall@ntia.gov>; Sloan, Tim <TSloan@ntia.gov>; Zambrano, Luis <LZambrano@ntia.gov>; Wolbers, Rachel <rwolbers@ntia.gov>
Subject: RE: EO Deliverables 6/5/20

Let me clarify that! If you can make a EO petition meeting on Monday afternoon during those times, please email me and let's try to find a time when the drafting team can meet. Beyond merely status update, I will have next steps as well. Thanks! Adam

---

From: Candeub, Adam
Sent: Friday, June 5, 2020 6:12 PM
To: Remaley, Evelyn <ERemaley@ntia.gov>; Kinkoph, Douglas <DKinkoph@ntia.gov>; May,Timothy <TMay@ntia.gov>; Wasilewski, Jim <JWasilewski@ntia.gov>; Smith, Kathy <KSmith@ntia.gov>; Brown, Milton <MBrown@ntia.gov>; Harris, Vernita D. <VHarris@ntia.gov>; Goldberg, Rafi <RGoldberg@ntia.gov>; Hall, Travis <THall@ntia.gov>; Sloan, Tim <TSloan@ntia.gov>; Zambrano, Luis <LZambrano@ntia.gov>; Wolbers, Rachel <rwolbers@ntia.gov>
Subject: RE: EO Deliverables 6/5/20

Thank you, Evelyn. This is great! I will review this weekend and get back to you. If people are able, I'd also like to arrange a brief status meeting on Monday afternoon. I have 12-2; 3.30-5.00pm available. Please let me know. Thanks! Adam

---

From: Remaley, Evelyn <ERemaley@ntia.gov>
Sent: Friday, June 5, 2020 5:01 PM
To: Kinkoph, Douglas <DKinkoph@ntia.gov>; Candeub, Adam <acandeub@ntia.gov>; May,Timothy <TMay@ntia.gov>; Wasilewski, Jim <JWasilewski@ntia.gov>; Smith, Kathy <KSmith@ntia.gov>; Brown, Milton <MBrown@ntia.gov>; Harris, Vernita D. <VHarris@ntia.gov>; Goldberg, Rafi <RGoldberg@ntia.gov>; Hall, Travis <THall@ntia.gov>; Sloan, Tim <TSloan@ntia.gov>; Zambrano, Luis <LZambrano@ntia.gov>; Wolbers, Rachel <rwolbers@ntia.gov>
Subject: EO Deliverables 6/5/20
Importance: High

Colleagues,

Please find attached the deliverables responsive to requests #5 and #6: a draft appendix of selected terms of service and draft introductory text.

(b) (5) [redacted] We are on track to circulate the issue-spotting with Rachel and Tim with enough time to deliver to the team by COB Monday.

Let us know if you have any questions,

Thanks!
Evelyn

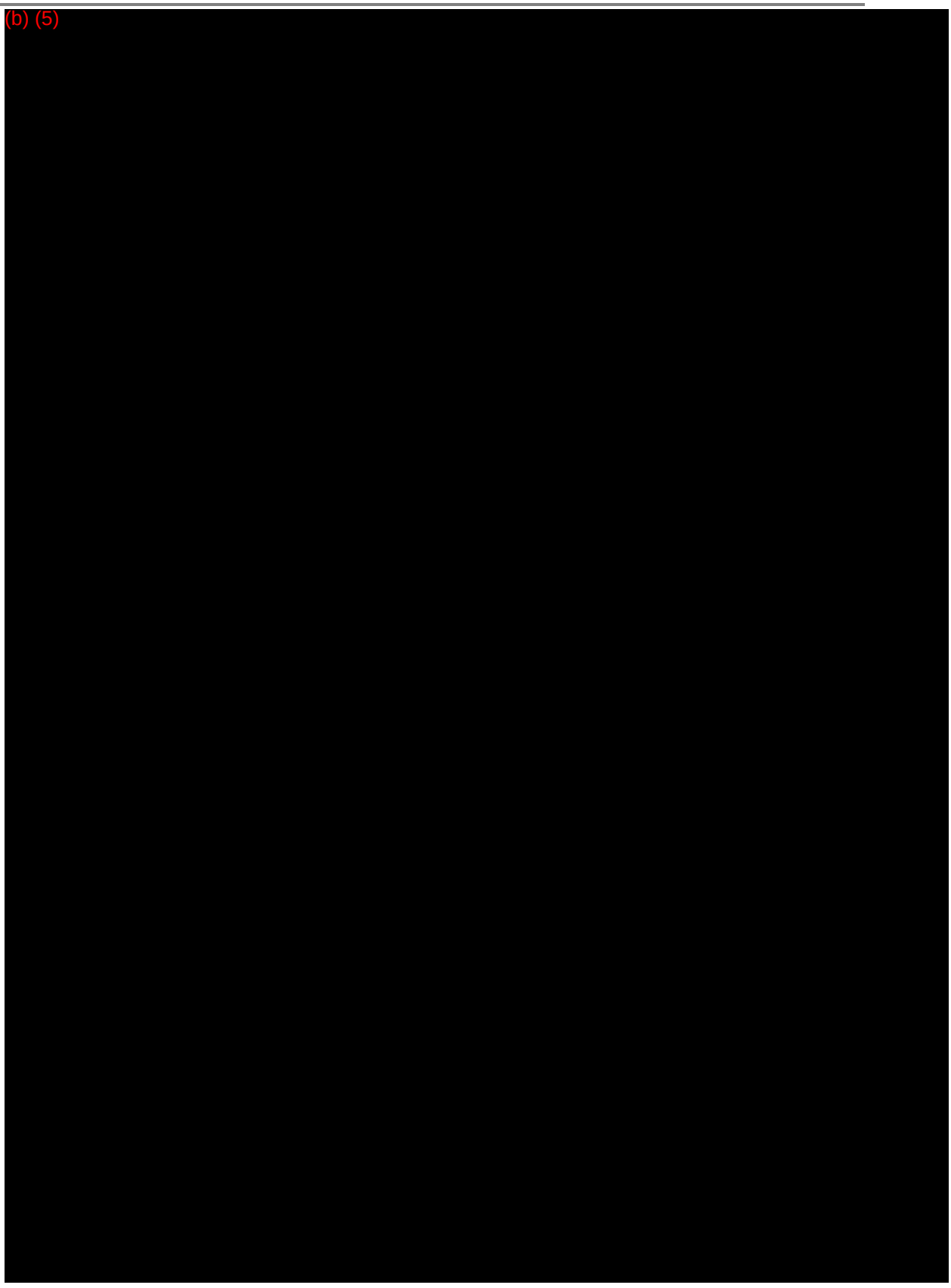
_____

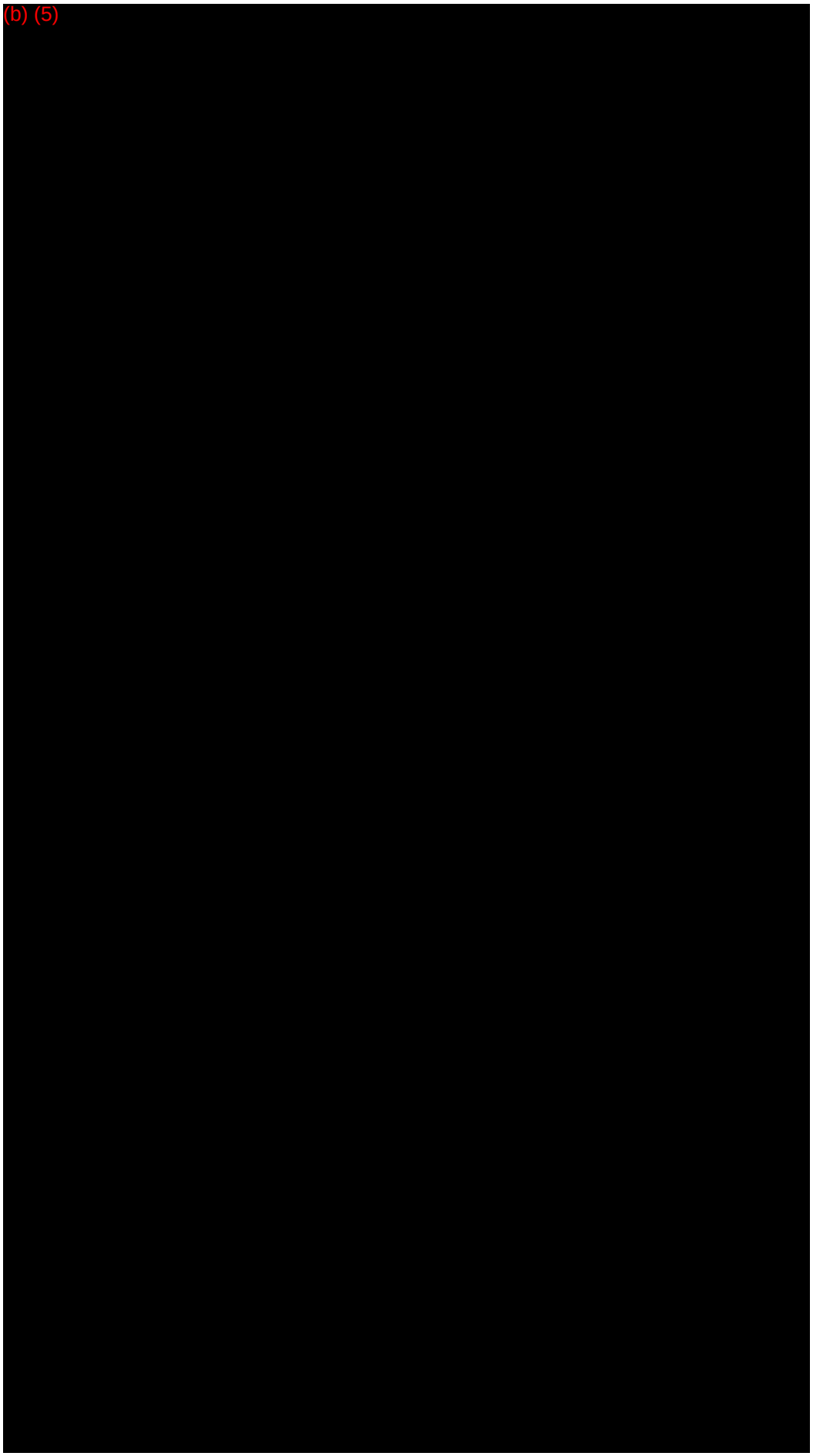
Evelyn L. Remaley
Associate Administrator for Policy Analysis & Development
National Telecommunications & Information Administration
U.S. Department of Commerce
EMAIL: eremaley@ntia.gov
VOICE: 202.482.3821

6 Pages (1 Record)
Withheld in their Entirety
Pursuant to FOIA Exemption
5
(5 U.S.C. § 552 (b)(5))

From: Candeub, Adam
To: Simington, Nathan
Subject: my only change in yellow
Date: Monday, July 13, 2020 1:59:10 PM

(b) (5)




(b) (5)

Adam Candeub
Deputy Assistant Secretary
National Telecommunications and Information Administration

From:	Smith, Kathy
To:	Kinkoph, Douglas; Candeub, Adam; Simington, Nathan
Cc:	Yusko, Stephen F.
Subject:	NTIA Petition for Rulemaking re: Social Media Executive Order
Date:	Monday, July 27, 2020 3:58:39 PM
Attachments:	NTIA Social Media Petition for Rulemaking 7.27.20.pdf NTIA Social Media Petition for Rulemaking 7.27.20.docx

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Attached please find a Word file containing the final of the Petition for Rulemaking that incorporates the last few minor footnote edits (Adam and Nathan) and Doug's signature block and deletes the Table of Authorities. Please note the Word file still contains the metadata so I would recommend not sharing it outside of Commerce even under an embargo

I have also attached a pdf file for signature. It has been stripped of all metadata.

Please sign it (when you regain access to Citrix) and send it back to me. I will file it through ECFS at 5 p.m. today and send you all the confirmation page.

Kathy Smith
Chief Counsel
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
HCHB 4713
Washington, DC 20230
Phone: 202-482-1816
Email: ksmith@ntia.gov

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Section 230 of the	)	File No. RM-_____
Communications Act of 1934	)	

To: The Commission

PETITION FOR RULEMAKING OF THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

National Telecommunications and
Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230
(202) 482-1816

July 27, 2020

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Section 230 of the	)	File No. RM-_____
Communications Act of 1934	)	

To: The Commission

PETITION FOR RULEMAKING OF THE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

Pursuant to section 1.401 of the Code of Federal Regulations,[1] in accordance with Executive Order 13925 (E.O. 13925),[2] and through the National Telecommunications and Information Administration (NTIA), the Secretary of Commerce (Secretary) respectfully requests that the Federal Communications Commission (FCC or Commission) initiate a rulemaking to clarify the provisions of section 230 of the Communications Act of 1934, as amended.[3] NTIA, as the President's principal adviser on domestic and international telecommunications and information policy, is charged with developing and advocating policies concerning the regulation of the telecommunications industry and "ensur[ing] that the views of the executive branch on telecommunications matters are effectively presented to the Commission . . . ."[4] Specifically, per E.O. 13925, NTIA requests that the Commission propose rules to clarify:

[1] 47 CFR § 1.401(a).
[2] Exec. Order No. 13925: Preventing Online Censorship, 85 Fed. Reg. 34,079 (June 2, 2020) (E.O. 13925).
[3] 47 U.S.C. § 230.
[4] 47 U.S.C. § 902(b)(2)(J); see also 47 U.S.C. §§ 901(c)(3), 902(b)(2)(I) (setting forth related duties).

(i) the interaction between subparagraphs (c)(1) and (c)(2) of section 230, in particular to clarify and determine the circumstances under which a provider of an interactive computer service that restricts access to content in a manner not specifically protected by subparagraph (c)(2)(a) may also not be able to claim protection under subparagraph (c)(1);[5]

(ii) the conditions under which an action restricting access to or availability of material is not "taken in good faith" within the meaning of subparagraph (c)(2)(A) of section 230, particularly whether actions can be "taken in good faith" if they are

(A) deceptive, pretextual, or inconsistent with a provider's terms of service; or

(B) taken after failing to provide adequate notice, reasoned explanation, or a meaningful opportunity to be heard;[6] and

(iii) any another proposed regulation that NTIA concludes may be appropriate to advance the policy described in subsection (a) of E.O. 13925, to impose disclosure requirements similar those imposed on other internet companies, such as major broadband service providers, to promote free and open debate on the internet.[7]

[5] See infra sections V.E.1, V.E.3 and section V.E.4.
[6] See infra section V.E.2.
[7] See infra section VI.

I. Statement of Interest

Since its inception in 1978, NTIA has consistently supported pro-competitive, pro-consumer telecommunications and internet policies. NTIA files this petition pursuant to E.O. 13925 to ensure that section 230 of the Communications Act of 1934, as amended, continues to further these goals. The President, through E.O. 13925, has directed the Secretary to file this petition for rulemaking through NTIA.[8]

II. Summary of Argument

Freedom of expression defends all our other freedoms. Only in a society that protects free expression can citizens criticize their leaders without fear, check their excesses, and expose their abuses. As Ben Franklin stated, "[w]hoever would overthrow the Liberty of a Nation, must begin by subduing the Freeness of Speech."[9] However, social media and its growing dominance present troubling questions on how to preserve First Amendment ideals and promote diversity of voices in modern communications technology. Social media's power stems in part from the legal immunities granted by the Communications Decency Act of 1996.[10] Congress passed the statute in the beginning of the internet age with the goal of creating a safe internet for children. It did so by protecting children from pornography and providing incentives for platforms to

[8] E.O. 13925, Section 2(b).
[9] Benjamin Franklin, Silence Dogood No. 8, The New-England Courant, July 9, 1722.
[10] Communications Decency Act of 1996 (CDA), Pub. L. No. 104-104, 110 Stat. 133, Title V—Obscenity and Violence, § 509 "Online family empowerment," codified at 47 U.S.C. 230, "Protection for private blocking and screening of offensive material." The CDA was incorporated as Title V to the Telecommunications Act of 1996, which in turn, was incorporated in the Communications Act of 1934. While these laws are all now part of the same statute, they do have separate histories and will be referred to individually when necessary.

remove harmful content. While the Supreme Court struck down the provisions limiting pornography, section 230 remained.[11]

Section 230 is the legislative response to a New York state case, Stratton Oakmont, Inc. v. Prodigy Servs. Co.[12] In this case, the court extended tort liability to internet bulletin boards and ruled that defendant Prodigy Services Company would be liable for the entire content of their platform if they engaged in editing and moderation to remove distasteful content.[13] Congress intended section 230 to offer platforms immunity from liability under certain circumstances, namely to encourage platforms to moderate specific types of material, mostly that are sexual or inappropriate to minors. It is vital to remember, however, that Congress in section 230 also had the express purpose of ensuring that the "Internet and other [internet platforms] offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity."[14]

Times have changed, and the liability rules appropriate in 1996 may no longer further Congress's purpose that section 230 further a "true diversity of political discourse." A handful of large social media platforms delivering varied types of content over high-speed internet have replaced the sprawling world of dial-up Internet Service Providers (ISPs) and countless bulletin boards hosting static postings. Further, with artificial intelligence and automated methods of textual analysis to flag harmful content now available, unlike at the time of Stratton Oakmont, Inc., platforms no longer need to manually review each individual post but can review, at much

[11] Reno v. American Civil Liberties Union, 521 U.S. 844 (1997).
[12] 1995 WL 323710 (N.Y. Sup. Ct., May 24, 1995) (unpublished). See also, Force v. Facebook, Inc., 934 F.3d 53, 63-64 (2d Cir. 2019) ("To overrule Stratton . . . .").
[13] Stratton Oakmont, 1995 WL 323710, at *3.
[14] 47 U.S.C. § 230(a)(3).

lower cost, millions of posts.[15] Thus, the fundamental assumptions driving early section 230 interpretation are antiquated and lack force, thus necessitating a recalibration of section 230 protections to accommodate modern platforms and technologies.

The FCC should use its authorities to clarify ambiguities in section 230 so as to make its interpretation appropriate to the current internet marketplace and provide clearer guidance to courts, platforms, and users. NTIA urges the FCC to promulgate rules addressing the following points:

1. Clarify the relationship between subsections (c)(1) and (c)(2), lest they be read and applied in a manner that renders (c)(2) superfluous as some courts appear to be doing.

2. Specify that Section 230(c)(1) has no application to any interactive computer service's decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service.

3. Provide clearer guidance to courts, platforms, and users, on what content falls within (c)(2) immunity, particularly section 230(c)(2)'s "otherwise objectionable" language and its requirement that all removals be done in "good faith."

4. Specify that "responsible, in whole or in part, for the creation or development of information" in the definition of "information content provider," 47 U.S.C. § 230(f)(3), includes editorial decisions that modify or alter content, including but not limited to substantively contributing to, commenting upon, editorializing about, or presenting with a discernible viewpoint content provided by another information content provider.

[15] Adrian Shahbaz & Allie Funk, "Freedom on the Net 2019 Key Finding: Governments harness big data for social media surveillance," Freedom House, Social Media Surveillance, https://freedomhouse.org/report/freedom-on-the-net/2019/the-crisis-of-social-media/social-media-surveillance ("Social media surveillance refers to the collection and processing of personal data pulled from digital communication platforms, often through automated technology that allows for real-time aggregation, organization, and analysis of large amounts of metadata and content . . . . Advances in artificial intelligence (AI) have opened up new possibilities for automated mass surveillance.").

5. Mandate disclosure for internet transparency similar to that required of other internet companies, such as broadband service providers.

III. The Commission Should Act to Protect Free Speech Online

New regulations guiding the interpretation of section 230 are necessary to facilitate the provisions' interpretation in a way that best captures one of the nation's most important Constitutional freedoms. "Free speech is the bedrock of American democracy . . . . The freedom to express and debate ideas is the foundation for all of our rights as a free people."[16] Our democracy has long recognized that control of public discourse in the hands of too few stifles freedom of expression and risks undermining our political institutions. For centuries, Americans have taken action to maintain the free flow of information and ideas to ensure the fullest and most robust marketplace of ideas—from the Postal Service Act of 1792, one of Congress's first acts which established preferential rates for newspapers,[17] to nondiscrimination requirements for telegraphs and telephones,[18] to antitrust actions to ensure the free flow of news stories,[19] and to efforts to limit undue dominance in broadcast and cable media to guarantee the flow of information to television viewers.[20]

Yet today, free speech faces new threats. Many Americans follow the news, stay in touch with friends and family, and share their views on current events through social media and other

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[16] E.O. 13925, Section 1.
[17] Richard B. Kielbowicz, News in the Mail: The Press, Post Office and Public Information, 1700-1860s, at 33-34 (1989).
[18] Thomas B. Nachbar, The Public Network, 17 CommLaw Conspectus 67, 77 (2008). ("Nondiscriminatory access is . . . the order of the day for . . . telecommunications, and even cable television.").
[19] Associated Press v. United States, 326 U.S. 1 (1945).
[20] Turner Broad. Sys, Inc. v. F.C.C., 512 U.S. 622 (1994); F.C.C. v. National Citizens Comm. for Broad., 436 U.S. 775 (1978); Nat'l Broad. Co. v. United States, 319 U.S. 190 (1943); Time Warner Ent. Co. L.P. v. F.C.C., 240 F.3d 1126 (D.C. Cir. 2001).

online platforms. These platforms function, as the Supreme Court recognized, as a 21st century equivalent of the public square.[21] Provision and control of the public square is a public trust. Because it entails selecting which speech gets heard and by whom, social media can assimilate a collective conversation into a corporate voice with a corporate point of view. As the E.O. explains, "[w]hen large, powerful social media companies censor opinions with which they disagree, they exercise a dangerous power. They cease functioning as passive bulletin boards, and ought to be viewed and treated as content creators."[22] The Commission itself has previously recognized the importance of enabling "the widest possible dissemination of information from diverse and antagonistic sources" and "assuring that the public has access to a multiplicity of information sources" as internet regulations' essential goal.[23]

Unfortunately, large online platforms appear to engage in selective censorship that is harming our national discourse. The E.O. notes that "[t]ens of thousands of Americans have reported online platforms "flagging" content as inappropriate, even though it does not violate any stated terms of service" and is not unlawful. The platforms "mak[e] unannounced and unexplained changes to company policies that have the effect of disfavoring certain viewpoints and delet[e] content and entire accounts with no warning, no rationale, and no recourse."[24] FCC

[21] Packingham v. North Carolina, 137 S. Ct. 1730, 1732 (2017) ("Social media . . . are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge.").
[22] E.O. 13925, Section 1.
[23] Federal Communications Commission, In the Matter of Protecting and Promoting the Open Internet, GN Docket No. 14-28, FCC 15-24, Report and Order on Remand, Declaratory Ruling, and Order, 2015 WL 1120110, *268 (¶ 545) (quoting Turner, 512 U.S. at 663).
[24] E.O. 13925, Section 1; Divino Group LLC, et al. v. Google LLC, et al., 5:19-cv-4749-VKD, Dkt #20 (2d Am. Compl.) at ¶¶ 119-123, 128-247 (N.D. Cal. (San Jose Division), dated Aug. 13, 2019) (class action complaint alleging YouTube censorship of LGBT+ content).

Commissioner Brendan Carr has remarked, "there's no question that [large social media platforms] are engaging in editorial conduct, that these are not neutral platforms."[25] Others have expressed shock that while large social media platforms will censor or fact-check constitutionally elected democratic leaders, many social media companies welcome and facilitate censorship by the Chinese Communist Party, thereby spreading disinformation and communist propaganda related to China's mass imprisonment of religious minorities, the origins of the COVID-19 pandemic, and the pro-democracy protests in Hong Kong.[26] Unfortunately, few academic empirical studies exist of the phenomenon of social media bias.

Much of social media's overarching influence and power stems from the immunities it enjoys under expansive interpretations of section 230 of the Communications Decency Act,[27] a provision Congress passed in 1996 at the beginning of the internet era. Many early cases, understandably protective of a nascent industry, read section 230's protections expansively. But, given the maturing internet economy and emergence of dominant social media platforms, the FCC should re-examine section 230, as well as other provisions of the Communications Act of 1934. The FCC should determine how section 230 can best serve its goals of promoting internet

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[25] Jan Jekielek, On Social Media Bias, Trump's Executive Order, and the China Data Threat: FCC Commissioner Brendan Carr, The Epoch Times, June 1, 2020, https://www.theepochtimes.com/on-social-media-bias-trumps-executive-order-and-the-china-data-threat-fcc-commissioner-brendan-carr_3372161.html.

[26] See, e.g., Sigal Samuel, China paid Facebook and Twitter to help spread anti-Muslim propaganda, Vox, Aug. 22, 2019, https://www.vox.com/future-perfect/2019/8/22/20826971/facebook-twitter-china-misinformation-ughiur-muslim-internment-camps; Ryan Gallagher, China's Disinformation Effort Targets Virus, Researcher Says, Bloomberg News, May 12, 2020, https://www.bloomberg.com/news/articles/2020-05-12/china-s-disinformation-campaign-targets-virus-and-businessman; James Titcomb & Laurence Dodds, Chinese state media use Facebook adverts to champion Hong Kong crackdown, June 8, 2020, https://www.telegraph.co.uk/technology/2020/06/08/chinese-state-media-use-facebook-adverts-champion-hong-kong/.

[27] 47 U.S.C. § 230.

diversity and a free flow of ideas, as well as holding dominant platforms accountable for their editorial decisions, in new market conditions and technologies that have emerged since the 1990s.[28]

IV. Relevant Facts and Data: Technological and Market Changes

Contemporary social media platforms have vastly different offerings, business models, relationships to users and customers, and, indeed, roles in national life than the early online bulletin boards that Prodigy and AOL offered in 1996. The FCC should recognize that the liability protections appropriate to internet firms in 1996 are different because modern firms have much greater economic power, play a bigger, if not dominant, role in American political and social discourse, and, with machine learning and other artificial techniques, have and exercise much greater power to control and monitor content and users.

CompuServe, Prodigy, America Online, and their competitors had fundamentally different business models from modern social media companies.[29] They had proprietary server banks, and their business model was to charge consumers for access, with significant surcharges

[28] See, e.g., Cubby, Inc. v. CompuServe Inc., 776 F.Supp. 135 (S.D.N.Y. 1991) (addressing CompuServe's 1990 service providing various online subscriber forums for certain groups).
[29] Andrew Pollack, Ruling May Not Aid Videotex, N.Y. Times, Sept. 15, 1987, at D1, https://www.nytimes.com/1987/09/15/business/ruling-may-not-aid-videotex.html (last visited July 27, 2020) ("The Videotex Industry Association estimates that there are 40 consumer-oriented services, such as CompuServe and the Source, in the United States, with a total membership of 750,000.").

for use of social features.[30] They were not interoperable,[31] There was thus no online "general public" population about whom information could be known, nor were there business partners to whom information on members of the public could be aggregated and sold. Online services faced a competitive landscape.

Online services competed with one another by commissioning or developing their own games, chat systems, financial-markets reporting, news services, and in-network mail services.[32] As users paid to connect, and thus directly funded online services, most online services did not contain advertising. The online service business model was not significantly reliant on third-party content because access to proprietary content was at the heart of online services' marketing

[30] Id. ("It is unclear, for instance, to what extent the gateway will be able to tell consumers where to go for the information they desire . . . . Each information service has its own commands for information retrieval."); Michael J. Himowitz, A look at on-line services CompuServe and Prodigy, The Baltimore Sun, Jan. 17, 1994 ("CompuServe [costs] $8.95 per month . . . . Effective Feb. 6, rates for forums and extended services . . . are an additional $4.80 per hour at 1200 or 2400 Baud, $9.60 per hour at 9600 or 14,400 Baud . . . . Prodigy: Most popular plan charges $14.95 per month . . . Additional Plus hours [for use of bulletin boards and stock market prices] are $3.60 each.").

[31] Pollack, supra note 29 ("Each information service has its own commands for information retrieval. With a useful gateway [which did not yet exist], the user would need to know only one set of commands and the gateway would translate them."); David Bernstein, Interoperability: The Key to Cloud Applications, https://e.huawei.com/en/publications/global/ict_insights/hw_376150/feature%20story/HW_376286 (last visited July 19, 2020) ("[T]he original online services such as AOL, Prodigy, and CompuServe had no interoperability between them. Content posted on one service could not be consumed by a client connected to a different service. Email could not be sent from a user on one service to a user on another.").

[32] Joanna Pearlstein, MacWorld's Guide to Online Services, MacWorld, Aug. 1994, at 90 ("Core services include general, business, and sports news; computer forums and news; reference materials; electronic mail and bulletin boards; business statistics and data; games; shopping services; travel services; and educational reference material. Still, the different online services do have different emphases, so even though they all offer a range of basic services, they are not interchangeable.").

efforts.[33] The online services of the late 1990s ran online bulletin boards as a minor sideline and used volunteer moderators from the computer hobbyist community.[34] Their business model was based on fees for connection time and professional database access, not community content.

One result of this model was that monitoring users and their content was a burden and regulatory imposition. Zeran, a leading and widely cited case on moderation, reflects this understanding of the technology of that time.[35] The Zeran court took the view, which most section 230 cases accept, that "liability [for third-party posts] upon notice [by an offended

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[33] James Coats, Getting on-line with cyberspace heavyweights, Chicago Tribune, Feb. 28, 1993 at C8 ("GEnie's greatest value to me is that it serves as a gateway to the ultraexpensive Dow Jones News/Retrieval service. Typing DOWJONES on GEnie gets me access to hundreds of thousands of newspaper articles - but at a cost well above $2 a minute. Still, when I'm involved in personal research, it empowers me with access to more than 100 different newspapers, wire services and magazines . . . . A costly service [on CompuServe] called IQUEST, for example, gets you access to thousands of newspapers, magazines, books and other research materials. A magazine database lets you search hundreds of thousands of back issues of publications from Playboy to Foreign Policy. The catch is that each article you decide to read in full costs $1.50 . . . . Tremendous amounts of information about stocks and investing can be had as well, for a price. You can follow favorite stocks by BasicQuotes and seek out news by company. Much of the famous Standard and Poor's research data can be had on CompuServe's S&P Online. Most company filings with the Securities and Exchange Commission can be downloaded on a service called Disclosure. I make heavy use of CompuServe's Executive News Service, which gives me an electronic 'clipping service' providing each day's news about dozens of firms I follow for my job, as well as other topics . . . . But Delphi takes the Internet much further than the other boards, which confine Internet traffic to electronic mail. With Delphi you can actually hook your home computer up with mainframes and minicomputers all around the world and read and download an almost unimaginably diverse wealth of files.").

[34] Catherine Buni & Soraya Chemaly, The Secret Rules of the Internet: the murky history of moderation, and how it's shaping the future of free speech, The Verge (April 13, 2016), https://www.theverge.com/2016/4/13/11387934/internet-moderator-history-youtube-facebook-reddit-censorship-free-speech (last visited July 19, 2020) ("Moderation's initially haphazard, laissez-faire culture has its roots here. Before companies understood how a lack of moderation could impede growth and degrade brands and community, moderators were volunteers; unpaid and virtually invisible. At AOL, moderation was managed by a Community Leader program composed of users who had previously moderated chat rooms and reported 'offensive' content. They were tasked with building 'communities' in exchange for having their subscription fees waived. By 2000, companies had begun to take a more proactive approach.").

[35] Zeran v. Am. Online, Inc., 129 F.3d 327 (4th Cir. 1997).

viewer] reinforces service providers' incentives to restrict speech and abstain from self-regulation."[36] The court went on to explain that online services cannot possibly take responsibility for third-party content due to its volume; as such, online services will simply prohibit all such content unless they are protected from liability for it. In the court's words:

> "If computer service providers were subject to distributor liability, they would face potential liability each time they receive notice of a potentially defamatory statement—from any party, concerning any message. Each notification would require a careful yet rapid investigation of the circumstances surrounding the posted information, a legal judgment concerning the information's defamatory character, and an on-the-spot editorial decision whether to risk liability by allowing the continued publication of that information. Although this might be feasible for the traditional print publisher, the sheer number of postings on interactive computer services would create an impossible burden in the Internet context."[37]

However, today's social media companies have adopted a different business model. Rather than provide database access, like Prodigy did, social media offers primarily third-party content.[38] Rather than charge fees, social media platforms profile users in order to categorize

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[36] Id. at 333.
[37] Id.
[38] Facebook Investor Relations, https://investor.fb.com/resources/default.aspx (last visited July 19, 2020) ("Founded in 2004, Facebook's mission is to give people the power to build community and bring the world closer together. People use Facebook to stay connected with friends and family, to discover what's going on in the world, and to share and express what matters to them."); Twitter Investor Relations, https://investor.twitterinc.com/contact/faq/default.aspx (last visited July 19, 2020) ("What is Twitter's mission statement? The mission we serve as Twitter, Inc. is to give everyone the power to create and share ideas and information instantly without barriers. Our business and revenue will always follow that mission in ways that improve – and do not detract from – a free and global conversation."); Google, Our Approach to Search, https://www.google.com/search/howsearchworks/mission/ (last visited July 19, 2020) ("Our company mission is to organize the world's information and make it universally accessible and useful."); YouTube Mission Statement, https://www.youtube.com/about/ (last visited July 19, 2020) ("Our mission is to give everyone a voice and show them the world. We believe that everyone deserves to have a voice, and that the world is a better place when we listen, share and build community through our stories."); Matt Buchanan, Instagram and the Impulse to Capture Every Moment, The New Yorker, June 20, 2013, https://www.newyorker.com/tech/annals-of-technology/instagram-and-the-impulse-to-capture-every-moment (last visited July 27, 2020)

them and connect them to advertisers and other parties interested in user information.[39] Online platforms like Twitter, Facebook, and YouTube have content moderation at the heart of their business models. Unlike the early internet platforms, they have invested immense resources into both professional manual moderation and automated content screening for promotion, demotion, monetization, and removal.[40]

("When I think about what Instagram is, I think about moments," said Kevin Systrom, the photo-sharing service's co-founder and C.E.O. "Our mission is to capture and share the world's moments.").

[39] Len Sherman, Why Facebook Will Never Change Its Business Model, Forbes.com, Apr, 16, 2018, https://www.forbes.com/sites/lensherman/2018/04/16/why-facebook-will-never-change-its-business-model/#7cdac11c64a7 (last visited July 27, 2020) ("By now, it's widely understood that Facebook's voracious appetite for user data is driven by their business model which charges advertisers for access to precisely targeted segments of their massive consumer database. No one knows more about more consumers than Facebook"); Twitter and Facebook have differing business models, The Economist, June 6, 2020, https://www.economist.com/business/2020/06/04/twitter-and-facebook-have-differing-business-models (last visited July 27, 2020) ("At first blush, Twitter and Facebook look similar. Each is a social network, connecting users online and presenting them with content in a 'feed', a never-ending list of posts, pictures and videos of pets. Each makes money by selling advertising, and thus has an interest in using every trick to attract users' attention. And each employs gobbets of data gleaned from users' behaviour to allow advertisers to hit targets precisely, for which they pay handsomely"); Enrique Dans, Google Vs. Facebook: Similar Business Models, But With Some Very Big Differences, Forbes.com, Feb. 2, 2019, https://www.forbes.com/sites/enriquedans/2019/02/02/google-vs-facebook-similar-business-models-but-with-some-very-big-differences/#6ab9408541ef (last visited July 27, 2020) ("Google does not sell my data or pass it on to any third party, it simply allows that third party to display an advertisement to a segment of its database that includes me, based on certain variables . . . . What is the result of Google knowing about us and our online interests? We receive ads that largely reflect those interests and we still have some control over what we see.").

[40] Zoe Thomas, Facebook content moderators paid to work from home, BBC.com, Mar. 18, 2020, https://www.bbc.com/news/technology-51954968 (last visited July 27, 2020) ("Facebook has approximately 15,000 content moderators in the US, who are hired by third-party contracting companies"); Elizabeth Dwoskin, et al., Content moderators at YouTube, Facebook and Twitter see the worst of the web — and suffer silently, Washington Post, July 25, 2019, https://www.washingtonpost.com/technology/2019/07/25/social-media-companies-are-outsourcing-their-dirty-work-philippines-generation-workers-is-paying-price/ (last visited July 27, 2020) ("In the last couple of years, social media companies have created tens of thousands of jobs around the world to vet and delete violent or offensive content . . . ."); Shannon Bond, Facebook, YouTube Warn Of More Mistakes As Machines Replace Moderators, National Public

Understanding how new entrants can or cannot participate in these intermediary markets is therefore key in understanding appropriate liability regimes; this is particularly important because liability shields can deter entrance. Market observers have significant concerns about barriers to entrance for new social media companies as well as social media's role with other edge providers in creating mediation markets. It is no secret that today's online platforms exist in highly concentrated markets.[41] Moreover, the relationship between social media and their adjacent markets is unclear, with mergers and other agreements having the potential for unexpected anticompetitive results.[42] Social media firms also demonstrate network effects and other barriers to entry, which frequently lead to weaker competition.[43] This lack of competition is particularly troubling given the decrease of new entrants documented in the broader economy.[44]

Section 230 was designed to assist the nascent internet industry. Pivotal judicial decisions, such as Zeran, interpreted ambiguous language in section 230 broadly, but at a time when different cost structures, business models, and markets prevailed. Given the rapidly

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Radio, March 31, 2020, https://www.npr.org/2020/03/31/820174744/facebook-youtube-warn-of-more-mistakes-as-machines-replace-moderators (last visited July 27, 2020) ("Facebook, YouTube and Twitter are relying more heavily on automated systems to flag content that violate their rules . . . . Tech companies have been saying for years that they want computers to take on more of the work of keeping misinformation, violence and other objectionable content off their platforms. Now the coronavirus outbreak is accelerating their use of algorithms rather than human reviewers.").

[41] Justin Haucap & Ulrich Heimeshoff, Google, Facebook, Amazon, eBay: Is the Internet driving competition or market monopolization? 11 Int. Econ. Policy 49–61 (2014).

[42] Carl Shapiro, Protecting Competition in the American Economy: Merger Control, Tech Titans, Labor Markets. 33(3) Journal of Economic Perspectives 69 (2019), available at http://faculty.haas.berkeley.edu/shapiro/protectingcompetition.pdf.

[43] Steven Berry, Martin Gaynor & Fiona Scott Morton, Do Increasing Markups Matter? Lessons from Empirical Industrial Organization, 33(3) Journal of Economic Perspectives 44 (2019).

[44] Germán Gutiérrez & Thomas Philippon, The Failure of Free Entry. NBER Working Paper No. 26001 (June 2019), available at https://www.nber.org/papers/w26001.pdf.

changing markets and relationship between market structure and optimal liability rules, NTIA urges the FCC to re-examine section 230 and work towards transparency in these markets.

V. The Authority and Need for Issuing Regulations for Section 230

This section sets forth the FCC's authority to issue regulations to interpret section 230 and shows how regulations are necessary to resolve the statute's ambiguities that the E.O. identified. This section further explains how the FCC has jurisdiction to issue regulations, outlines the background and history of section 230, explains its structure, and shows how courts have relied upon its ambiguities to make overly expansive interpretations.

Finally, it examines how the section's ambiguities should be resolved. Specifically, NTIA respectfully requests the FCC to:

- clarify the relationship between 230(c)(1) and (c)(2);
- explain the meaning of "good faith" and "otherwise objectionable" in section 230(c)(2);
- specify how the limitation on the meaning of "interactive computer service" found in section 230(f)(2) should be read into section 230(c)(1); and,
- explicate the meaning of "treated as a speaker or publisher" in section 230(c)(1).

A. The Commission's Power to Interpret Section 230 of the Communications Decency Act

Section 201(b) of the Communications Act (Act) empowers the Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out this chapter."[45] Under this authority, the FCC should promulgate rules to resolve ambiguities in Section 230. The Supreme Court has confirmed that "the grant in section 201(b) means what it

[45] 47 U.S.C. § 201(b).

says: The FCC has rulemaking authority to carry out the 'provisions of this Act.'" Section 230, in turn, was incorporated into the Act – in the same portion of the Act, Title II, as section 201(b) – by the Telecommunications Act of 1996 (1996 Act). The fact that section 230 was enacted after section 201(b) is of no consequence; the Supreme Court repeatedly has held that the Commission's section 201(b) rulemaking power extends to all subsequently enacted provisions of the Act, specifically identifying those added by the Telecommunications Act of 1996.[46] Thus, the Commission has authority under section 201(b) to initiate a rulemaking to implement section 230. That broad rulemaking authority includes the power to clarify the language of that provision, as requested in the petition.

The Commission has authority to implement section 230 through regulation even if this section was added to the 1934 Act through the amendments in the Telecommunications Act of 1996. It does not matter if the provision specifically mentions or contemplates FCC regulation. For instance, section 332(c)(7), which was also added to the Act by the 1996 Act, limits State and local decision-making on the placement, construction, or modification of certain wireless service facilities. The section makes no mention of FCC authority, only alluding to the Commission in passing and giving it no role in the provision's implementation. The Supreme Court nonetheless, upheld Commission's authority to issue regulations pursuant to section

[46] AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366, 378 (1999) ("We think that the grant in § 201(b) means what it says: The FCC has rulemaking authority to carry out the "provisions of this Act," which include §§ 251 and 252, added by the Telecommunications Act of 1996"); City of Arlington v. FCC, 668 F.3d 229, 250 (5th Cir. 2012), aff'd, 569 U.S. 290 (2013) ("Section 201(b) of that Act empowers the Federal Communications Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out [its] provisions. Of course, that rulemaking authority extends to the subsequently added portions of the Act.").

332(c)(7) for the simple reason that it was codified within the 1934 Act, and section 201(b) empowers the Commission to promulgate rules interpreting and implementing the entire Act.[47]

Similarly, in Iowa Utilities, the Supreme Court ruled that the FCC had rulemaking authority to implement sections 251 and 252 of the Act.[48] As with section 332, these sections did not explicitly grant the Commission power over all aspects of their implementation, arguably excluding intrastate and other areas. Nonetheless, the Court ruled that "§ 201(b) explicitly gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies."[49] These two decisions, and their underlying rationales, compel the same result for a Commission rulemaking to interpret section 230, and the rationale is simple and inarguable: if Congress chooses to codify a section into the 1934 Communications Act, then section 201(b) gives the FCC the power to clarify and implement it through regulation.

Neither section 230's text, nor any speck of legislative history, suggests any congressional intent to preclude the Commission's implementation. This silence further underscores the presumption that the Commission has power to issue regulations under section 230. As the Fifth Circuit noted with respect to section 332(c)(7), "surely Congress recognized that it was legislating against the background of the Communications Act's general grant of rulemaking authority to the FCC." [50] Accordingly, if Congress wished to exclude the Commission from the interpretation of section 230, "one would expect it to have done so explicitly." Congress did not do so and, as was the case for section 332(c)(7), that decision

[47] City of Arlington, 569 U.S. at 293 ("Of course, that rulemaking authority [of section 201(b)] extends to the subsequently added portions of the Act").
[48] Iowa Util. Bd., 525 U.S. at 378-87.
[49] Iowa Util. Bd., 525 U.S. at 380.
[50] Arlington, 668 F.3d at 250.

opens an ambiguity in section 230 that the Commission may fill pursuant to its section 201(b) rulemaking authority.

B. Background to Section 230

Section 230 reflects a congressional response to a New York state case, Stratton Oakmont, Inc. v. Prodigy Servs. Co., decided in 1995.[51] In Stratton Oakmont, a New York trial court reasoned that Prodigy had become a "publisher" under defamation law because it voluntarily deleted some messages from its message boards "on the basis of offensiveness and 'bad taste,'" and was liable for the acts of its agent, the "Board Leader" of the message board, who it had hired to monitor postings on its bulletin board. The court held that Prodigy, having undertaken an affirmative duty to remove content, therefore was legally responsible for failing to remove an allegedly defamatory posting.[52] The U.S. Court of Appeals for the Ninth Circuit explained that: "[t]he Stratton Oakmont court concluded that when a platform engages in content

[51] Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC, 521 F.3d 1157, 1163 (9th Cir. 2008) ("Section 230 was prompted by a state court case holding Prodigy responsible for a libelous message posted on one of its financial message boards"); Barnes v. Yahoo!, Inc., 570 F.3d 1096, 1101 (9th Cir. 2009) ("This is not surprising, because, as we and some of our sister circuits have recognized, Congress enacted the Amendment in part to respond to a New York state court decision, Stratton Oakmont, [citations omitted,] which held that an internet service provider could be liable for defamation."); Barrett v. Rosenthal, 40 Cal. 4th 33, 44, 146 P.3d 510, 516 (2006) ("The legislative history indicates that section 230 was enacted in response to an unreported New York trial court case."); Sen. Rep. No. 104-230, 2d. Session at 194 (1996) ("One of the specific purposes of [section 230] is to overrule Stratton Oakmont v. Prodigy and any other similar decisions"); see also H.R. Conf. Rep. No. 104-458, at 208 ("The conferees believe that [decisions like Stratton Oakmont] create serious obstacles to the important federal policy of empowering parents to determine the content of communications their children receive through interactive computer services"); 141 Congressional Record H8469–H8470 (daily ed., June 14, 1995) (statement of Rep. Cox, referring to disincentives created by the Stratton Oakmont decision); Blumenthal v. Drudge, 992 F. Supp. 44, 52 n.13 (D.D.C. 1998) ("the legislative history makes clear that one of the primary purposes of Section 230 was to overrule the Stratton Oakmont decision").

[52] Stratton Oakmont, 1995 WL 323720 at *4.

moderation, or 'some voluntary self-policing,' the platform becomes 'akin to a newspaper publisher, and thus responsible for messages on its bulletin board that defamed third parties.'"[53]

Stratton Oakmont applied established tort law, which makes "publishers" liable for defamatory material.[54] Traditionally, tort law defines "publication" as simply the "communication intentionally or by a negligent act to one other than the person defamed."[55] But because the publication element of a defamation claim can also be satisfied when someone unreasonably fails to remove a communication exhibited via means in his possession or control, the Stratton Oakmont court concluded that Prodigy's content moderation or "voluntary self-policing" of the bulletin board rendered Prodigy a publisher of a defamatory statement on its board. Therefore, Prodigy was liable as a publisher.[56]

Stratton Oakmont distinguishes an earlier case, Cubby, Inc. v. CompuServe, Inc.,[57] which ruled an internet bulletin board was not the publisher of material on its bulletin board. The key distinguishing factor was that in Cubby, CompuServe did not moderate postings. The court ruled that CompuServe was not a publisher, but rather what tort law terms a "distributor," i.e., one "who merely transmit[s] defamatory content, such as news dealers, video rental outlets,

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[53] Fair Hous. Council, 521 F.3d at 1163.
[54] Barnes, 570 F.3d at 1104, citing W. Page Keeton, et al., Prosser and Keeton on the Law of Torts § 113, at 799 (5th ed. 1984) ("[E]veryone who takes part in the publication, as in the case of the owner, editor, printer, vendor, or even carrier of a newspaper is charged with publication."); see also Cianci v. New Times Publ'g Co., 639 F.2d 54, 60–61 (2d Cir.1980) (noting the "black-letter rule that one who republishes a libel is subject to liability just as if he had published it originally").
[55] Restatement (Second) of Torts § 577.
[56] Stratton Oakmont, 1995 WL 323710 at *5 ("PRODIGY's conscious choice, to gain the benefits of editorial control, has opened it up to a greater liability than CompuServe and other computer networks that make no such choice."); Barnes, 570 F.3d at 1102 ("publication involves reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content"); see Rodney A. Smolla, Law of Defamation § 4:77 (2d ed., 1999).
[57] Cubby, 776 F.Supp. 135.

bookstores, libraries, and other distributors and vendors."[58] "Distributors" are subject to liability "if, but only if, they know or have reason to know of the content's defamatory character."[59] Thus, publishers had strict liability for materials they published, whereas distributors only had liability for publishing defamation with actual or constructive knowledge of its defamatory character.[60] The Stratton Oakmont court reasoned that, in Cubby, CompuServe "had no opportunity to review the contents of the publication at issue before it was uploaded into CompuServe's computer banks," and, therefore, CompuServe had no liability for defamatory posts on platforms that it owned and controlled as distributor.[61]

While following established common law tort rules, the Stratton Oakmont and Cubby cases presented internet platforms with a difficult choice: voluntarily moderate unlawful or obscene content and thereby become liable for all messages on their bulletin boards, or do nothing and allow unlawful and obscene content to cover their bulletin boards unfiltered. In litigation, Prodigy claimed that the "sheer volume" of message board postings it received—by our current standards a humble "60,000 a day"—made manually reviewing every message impossible. If forced to choose between taking responsibility for all messages and deleting no messages at all, it would take the latter course.[62] Thus, given the technological differences between an internet platform and a bookstore or library, the former's ability to aggregate a much greater volume of information, traditional liability rules became strained. Tort law risked dis-incentivizing platforms from editing or moderating any content for fear they would become liable for all third-party content.

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[58] Smolla § 4:92.
[59] Restatement (Second) of Torts § 581(1) (1977).
[60] Prosser, supra note 54, § 113 at 803.
[61] Stratton Oakmont, 1995 WL 323710 at *2-3.
[62] Stratton Oakmont, 1995 WL 323710 at *3.

Congress intended section 230 to address this difficult liability problem, but nothing in the law's history, purpose or text allows for the conclusion that internet platforms should avoid all responsibility for their own editing and content-moderating decisions. Indeed, section 230 was originally titled the "Online Family Empowerment" amendment to the Communications Decency Act, which was titled, "protection for private blocking and screening of offensive material." [63] Responding to pornography and obscene material on the web, Congress designed section 230 to encourage platforms to moderate specific types of content, mostly related to sexual material inappropriate to minors. Congress did not intend a vehicle to absolve internet and social media platforms—which, in the age of dial-up internet bulletin boards, such as Prodigy, did not exist—from all liability for their editorial decisions.

Representatives Christopher Cox and Ron Wyden floated the bill that became section 230 as an alternative to Senator J. James Exon's bill that criminalized the transmission of indecent material to minors.[64] In public comments, Representative Cox explained that the section 230 would reverse Stratton Oakmont and advance the regulatory goal of allowing families greater power to control online content.[65] The final statute reflected his stated policy: "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

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[63] Telecommunications Act of 1996, Pub. L. No. 104-104, title V, Sec. 509 (1996).
[64] Robert Cannon, The Legislative History of Senator Exon's Communications Decency Act: Regulating Barbarians on the Information Superhighway, 49 Fed. Comm. L.J. 51 (1996); Felix T. Wu, Collateral Censorship and the Limits of Intermediary Immunity, 87 Notre Dame L. Rev. 293, 316 (2011); 141 Cong. Rec. H8468-69 (daily ed. Aug. 4, 1995); Ashcroft v. Am. Civil Liberties Union, 535 U.S. 564, 564 (2002) ("[T]he Communications Decency Act reflected Congress's response to the proliferation of pornographic, violent and indecent content on the web Congress' first attempt to protect children from exposure to pornographic material on the Internet.").
[65] See 141 Cong. Rec. H8469-70 (daily ed. Aug. 4, 1995) (statement of Rep. Cox).

services."[66] The comments in the Congressional record from supporting congressmen and women—and it received strong bi-partisan support—reveal an understanding that the Online Family Empowerment amendment, now codified as section 230, as a non-regulatory approach to protecting children from pornography,[67] intended to provide incentives for "Good Samaritan" blocking and screening of offensive material.

C. Section 230(c)'s Structure

To further these goals, Congress drafted the "Good Samaritan" exception to publisher liability. Section 230(c)(1) has a specific focus: it prohibits "treating" "interactive computer services," i.e., internet platforms, such as Twitter or Facebook, as "publishers." But, this provision only concerns "information" provided by third parties, i.e., "another internet content provider"[68] and does not cover a platform's own content or editorial decisions.

The text of section 230(c)(1) states:

(c) Protection for "Good Samaritan" blocking and screening of offensive material:

(1) Treatment of publisher or speaker

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[66] 47 U.S.C. § 230(b)(3).

[67] See 141 Cong. Rec. H8470 (1995) (statement of Rep. White) ("I want to be sure we can protect [children] from the wrong influences on the Internet. But . . . the last person I want making that decision is the Federal Government. In my district right now there are people developing technology that will allow a parent to sit down and program the Internet to provide just the kind of materials that they want their child to see. That is where this responsibility should be, in the hands of the parent. That is why I was proud to cosponsor this bill that is what this bill does . . . ."); id., (statement of Rep. Lofgren) ("[The Senate approach] will not work. It is a misunderstanding of the technology. The private sector is out giving parents the tools that they have. I am so excited that there is more coming on. I very much endorse the Cox-Wyden amendment . . . .").

[68] 47 U.S.C. § 230(c)(1).

> No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

Section (c)(2) also has a specific focus: it eliminates liability for interactive computer services that act 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."[69]

Subsection (c)(2) governs the degree to which some of the platform's own content moderation decisions receive any legal protection, stating:

> "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 . . . ."

Here, Congress protects "any action . . . taken in good faith to restrict access to or availability of material." This means any social media platform's editorial judgment, moderation, content editing or deletion receives legal immunity, but the plain words of the provision indicate that this protection only covers decisions to restrict access to certain types of enumerated content. As discussed infra, these categories are quite limited and refer primarily to traditional areas of media regulation—also consistent with legislative history's concern that private regulation could create family-friendly internet spaces—and only actions within these categories taken in "good faith."

[69] 47 U.S.C. § 230(c)(2).

D. Expansive Court Rulings Tied to Early Platforms and Outdated Technology

Courts have recognized that "Congress enacted this provision for two basic policy reasons: to promote the free exchange of information and ideas over the Internet and to encourage voluntary monitoring for offensive or obscene material."[70] Congress intended sections 230(c)(1) and (c)(2) to protect platform openness and monitoring for certain specific issues. But, as discussed infra, ambiguous language in these statutes allowed some courts to broadly expand section 230's immunity from beyond its original purpose into a bar any legal action or claim that involves even tangentially "editorial judgment."[71] These subsequent protections established from "speaker or publisher" are overly broad and expansive, and often have absolutely nothing to do with the original harm section 230 was meant to remedy: relieving platforms of the burden of reading millions of messages to detect for defamation as Stratton Oakmont would require. Far and above initially intended viewer protection, courts have ruled section 230(c)(1) offers immunity from contracts,[72] consumer fraud,[73] revenge pornography,[74]

[70] Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1122 (9th Cir. 2003).
[71] See, e.g., Sikhs for Justice "SFJ", Inc. v. Facebook, Inc., 144 F.Supp.3d 1088, 1094–1095 (N.D.Cal. 2015).
[72] Caraccioli v. Facebook, Inc., 167 F. Supp.3d 1056, 1064-66 (N.D. Cal. 2016) (dismissing breach of contract claim and Cal. Bus. & Prof. Code § 17200 unfair practices claim); Lancaster v. Alphabet Inc., No. 2016 WL 3648608, at *5 (N.D. Cal. July 8, 2016) (dismissing claim for breach of covenant of good faith and fair dealing); Jurin v. Google, Inc., 695 F. Supp. 2d 1117, 1122–23 (E.D. Cal. 2010) (dismissing claim for fraud); Fed. Agency of News LLC, et al. v. Facebook, Inc., 395 F. Supp. 3d 1295 (N.D. Cal. 2019) (dismissing discrimination claims under Title II and 42 U.S.C. § 1983); Obado v. Magedson, 43 Media L. Rep. 1737 (D.N.J. 2014) (dismissing claim for promissory estoppel), aff'd, 612 F. App'x 90 (3d Cir. 2015).
[73] See Gentry v. eBay, Inc., 121 Cal. Rptr. 2d 703 (Cal. Ct. App. 2002); Hinton v. Amazon, 72 F. Supp. 3d 685, 687 (S. D. Miss. 2014); Oberdorf v. Amazon, 295 F. Supp. 3d 496 (Mid. D. PA Dec. 21, 2017).
[74] Jones v. Dirty World Entertainment Holding LLC, 755 F.3d 398 (6th Cir. 2014); S.C. v. Dirty World LLC, 40 Media L. Rep. 2043 (W.D. Mo. 2012); Poole v. Tumblr, Inc., 404 F. Supp. 3d 637 (D. Conn. 2019).

anti-discrimination civil rights obligations,[75] and even assisting in terrorism.[76] By expanding protections beyond defamation, these courts extend to platforms a privilege to ignore laws that every other communications medium and business must follow and that are no more costly or difficult for internet platforms to follow than any other business.

The problem of overly expansive interpretations for section 230 is not merely hypothetical. Tens of thousands of Americans have reported, among other troubling behaviors, online platforms "flagging" content as inappropriate, even though it does not violate any stated terms of service; making unannounced and unexplained changes to company policies that have the effect of disfavoring certain viewpoints; and deleting content and entire accounts with no warning, no rationale, and no recourse. As FCC Commissioner Brendan Carr has observed, social media such as Twitter "punis[h] speakers based on whether it approves or disapproves of their politics."[77] One can hardly imagine a result more contrary to Congress's intent to preserve on the internet "a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity."[78]

Further, by making contract and consumer fraud claims concerning moderation unenforceable under section 230, courts seriously injure section 230's goal "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services."[79] Content moderation policies become, as FCC Commissioner Brendan

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[75] Sikhs for Justice "SFJ", Inc., 144 F. Supp.3d 1088, 1094-1095.
[76] Force, 934 F.3d at 57.
[77] Jon Brokin, Arstechnica, FCC Republican excitedly endorses Trump's crackdown on social media, May 29, 2020, https://arstechnica.com/tech-policy/2020/05/fcc-republican-excitedly-endorses-trumps-crackdown-on-social-media/.
[78] 47 U.S.C. § 230(a)(1).
[79] 47 U.S.C. § 230(b)(2).

Carr recently described Twitter's moderation policy, "free speech for me, but not for thee." [80] Further, if interactive computer services' contractual representations about their own services cannot be enforced, interactive computer services cannot distinguish themselves. Consumers will not believe, nor should they believe, representations about online services. Thus, no service can credibly claim to offer different services, further strengthening entry barriers and exacerbating competition concerns.

Much of this overly expansive reading of section 230 rests on a selective focus on certain language from Zeran, a case from the United States of Appeals for the Fourth Circuit.[81] The line of court decisions expanding section 230 in such extravagant ways relies on Zeran's reference to: "lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred."[82] This language arguably provides full and complete immunity to the platforms for their own publications, editorial decisions, content-moderating, and affixing of warning or fact-checking statements.[83] But, it is an erroneous interpretation, plucked from its surrounding context and thus removed from its more accurate meaning.

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[80] News Break, Brendan Carr Decries Twitter Censorship as 'Free Speech for Me, but Not for Thee, June 11, 2020, https://www.newsbreak.com/news/1582183608723/brendan-carr-decries-twitter-censorship-as-free-speech-for-me-but-not-for-thee.

[81] Zeran, 129 F.3d at 327.

[82] Zeran, 129 F.3d at 330.

[83] These lines from Zeran have led some courts to adopt the so-called three part section 230(c)(1) test: (1) whether Defendant is a provider of an interactive computer service; (2) if the postings at issue are information provided by another information content provider; and (3) whether Plaintiff's claims seek to treat Defendant as a publisher or speaker of third party content. Okeke v. Cars.com, 966 N.Y.S.2d 843, 846 (Civ. Ct. 2013), citing Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 564 F. Supp. 2d 544, 548 (E.D. Va. 2008), aff'd, 591 F.3d 250 (4th Cir. 2009). As the text explains, this so-called test errs in the third prong. The question is not whether the claim treats defendant as a publisher or speaker—after all, virtually every legal claim (contract, fraud, civil rights violations) would do so. The question is whether liability is

In fact, the quotation refers to third party's exercise of traditional editorial function—not those of the platforms. As the sentence in Zeran that is immediately prior shows, section 230 "creates a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service." In other words, the liability from which section 230(c)(1) protects platforms is that arising from the content that the third-party posts—i.e. the "information" posted by "another information provider" and those information providers' editorial judgments.

In light of the history of publisher and distributor liability law upon which section 230 draws, as well as its actual text, the best way to interpret the distinction between section 230(c)(1) and (c)(2) is as follows: Section 230(c)(1) applies to acts of omission—to a platform's failure to remove certain content. In contrast, section 230(c)(2) applies to acts of commission—a platform's decisions to remove. Section 230(c)(1) does not give complete immunity to all a platform's "editorial judgments."

E. Need for FCC Regulations: Ambiguities in Section 230

Section 230 contains a number of ambiguities that courts have interpreted broadly in ways that are harmful to American consumers, free speech, and the original objective of the statute. First, as discussed below, uncertainty about the interplay between section 230(c)(1) and (c)(2) has led many courts to a construction of the two provisions that other courts consider to be anomalous or lead to rendering section 230(c)(2) superfluous. Second, the interplay between section 230(c)(1) and (c)(2) does not make clear at what point a platform's moderation and presentation of content becomes so pervasive that it becomes an information content provider

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based on the content of third-party information. Requiring platforms to monitor the content of thousands of posts was the impetus behind section 230.

and, therefore, outside of section 230(c)(1)'s protections. Third, critical phrases in section 230(c)(2)— the "otherwise objectionable" material that interactive computer service providers may block without civil liability; and the "good faith" precondition for activating that immunity—are ambiguous on their face. And, with respect to the former, courts have posited starkly divergent interpretations that can only create uncertainty for consumers and market participants. Finally, what it means to be an "information content provider" or to be "treated as a publisher or speaker" is not clear in light of today's new technology and business practices. The Commission's expertise makes it well equipped to address and remedy section 230's ambiguities and provider greater clarity for courts, platforms, and users.

1. The Interaction Between Subparagraphs (c)(1) and (c)(2)

Ambiguity in the relationship between subparagraphs (c)(1) and (c)(2) has resulted in courts reading section 230(c)(1) in an expansive way that risks rendering (c)(2) a nullity. Numerous district court cases have held that section 230(c)(1) applies to removals of content, not section 230(b)(2) with its exacting "good faith" standard."[84] For instance, in Domen v. Vimeo, a federal district court upheld the removal of videos posted by a religious groups' questioning a California law's prohibition on so-called sexual orientation change efforts (SOCE), and the law's effect on pastoral counseling. Finding the videos were "harassing," the court upheld their removal under both section 230(c)(1) and section (c)(2), ruling that these sections are co-extensive, rather than aimed at very different issues.[85] In doing so, the court rendered section

[84] Domen v. Vimeo, Inc., 433 F. Supp. 3d 592, 601 (S.D.N.Y. 2020); Lancaster v. Alphabet, Inc., 2016 WL 3648608 (N.D. Cal. July 28, 2016); Sikhs for Justice "SFJ", Inc., 144 F.Supp.3d 1088.
[85] Domen, 433 F. Supp. 3d at 601 ("the Court finds that Vimeo is entitled to immunity under either (c)(1) or (c)(2)").

230(c)(2) superfluous—reading its regulation of content removal as completely covered by section 230(c)(1)'s regulation of liability for user-generated third party content.

The Commission should promulgate a regulation to clarify the relationship between the two provisions so that section 230(c)(1) does not render section 230(c)(1) superfluous. To determine how these subparagraphs interact—or as E.O. 13925 specifically instructs: "to clarify and determine the circumstances under which a provider of an interactive computer service that restricts access to content in a manner not specifically protected by subparagraph (c)(2)(A) may also not be able to claim protection under subparagraph (c)(1),"[86] the FCC should determine whether the two subsections' scope is additive or not. While some courts have read section 230(c)(1) "broadly,"[87] few have provided any principled distinction between the two subsections.

NTIA urges the FCC to follow the canon against surplusage in any proposed rule.[88] Explaining this canon, the Supreme Court holds, "[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . . ."[89] The Court emphasizes that the canon "is strongest when an interpretation would render superfluous another part of the same statutory scheme."[90]

While some district courts, such as Domen discussed above, have ruled that section 230(c)(1) applies to content removal, which is section 230(c)(2)'s proper domain, those courts

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[86] E.O. 13925 § 2(b)(i).
[87] See Force, 934 F.3d at 64.
[88] Marx v. General Revenue Corp., 568 U.S. 371, 385 (2013).
[89] Corley v. United States, 556 U.S. 303, 314 (2009), quoting Hibbs v. Winn, 542 U.S. 88, 101 (2004).
[90] Marx, 568 U.S. at 386; see also Fair Hous. Council, 521 F.3d 1157 at 1167-68 (avoiding superfluity in interpret the "developer" exception in Section 230(f)(3) of the CDA).

that have explicitly inquired into the proper relationship between the two subparagraphs have followed the surplusage canon—ruling that the provisions cover separate issues[91] and "address different concerns."[92] "Section 230(c)(1) is concerned with liability arising from information provided online," while "[s]ection 230(c)(2) is directed at actions taken by Internet service providers or users to restrict access to online information."[93] Thus, "[s]ection 230(c)(1) provides immunity from claims by those offended by an online publication, while section 230(c)(2) protects against claims by those who might object to the restriction of access to an online publication."[94] Courts have refused to "interpret[] the CDA . . . [to allow] the general immunity in (c)(1) [to] swallow[] the more specific immunity in (c)(2)" because subsection (c)(2) immunizes only an interactive computer service's "actions taken in good faith."[95]

NTIA suggests that the FCC can clarify this relationship between section 230(c)(1) and section 230(c)(2) by establishing the following points. First, the FCC should make clear that section 230(c)(1) applies to liability directly stemming from the information provided by third-party users. Section 230(c)(1) does not immunize a platforms' own speech, its own editorial decisions or comments, or its decisions to restrict access to content or its bar user from a platform. Second, section 230(c)(2) covers decisions to restrict content or remove users.

NTIA, therefore, requests that the Federal Communications Commission add the below Subpart E to 47 CFR Chapter I:

> **Subpart E. Interpreting Subsection 230(c)(1) and Its Interaction With Subsection 230(c)(2).**

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[91] See, e.g., Zango, 568 F.3d at 1175 (holding that (c)(2) is a "different . . . statutory provision with a different aim" than (c)(1)).
[92] Barrett, 40 Cal. 4th 33.
[93] Id. at 49 (emphasis added).
[94] Id. (emphasis added).
[95] e-ventures Worldwide, LLC v. Google, Inc., (M.D. Fla. Feb. 8, 2017) 2017 U.S. Dist. LEXIS 88650, at *9.

§ 130.01
As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

(a) 47 U.S.C. 230(c)(1) applies to an interactive computer service for claims arising from failure to remove information provided by another information content provider. Section 230(c)(1) has no application to any interactive computer service's decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service. Any applicable immunity for matters described in the immediately preceding sentence shall be provided solely by 47 U.S.C. § 230(c)(2).

(b) An interactive computer service is not a publisher or speaker of information provided by another information content provider solely on account of actions voluntarily taken in good faith to restrict access to or availability of specific material in accordance with subsection (c)(2)(A) or consistent with its terms of service or use.

2. The Meaning of Section 230(c)(2)

Section 230(c)(2)'s ambiguities include (1) how to interpret "otherwise objectionable" and (2) "good faith."

a. "Otherwise objectionable"

If "otherwise objectionable" means any material that any platform "considers" objectionable, then section 230(b)(2) offers de facto immunity to all decisions to censor content. And some district courts have so construed section 230(c)(2).[96] But, many courts recognize

[96] Domen v. Vimeo, Inc., 2020 U.S. Dist. L 7935 (S.D.N.Y. Jan. 15, 2020), appeal filed No 20-616 (Feb. 18, 2020) ("Section 230(c)(2) is focused upon the provider's subjective intent of what is 'obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable.' That section 'does not require that the material actually be objectionable; rather, it affords protection for blocking material "that the provider or user considers to be' objectionable."'); Langdon v. Google, Inc., 474 F. Supp. 2d 622, 631 (D. Del. 2007) ("Plaintiff argues there was no refusal to run his ads on the basis they were obscene or harassing, and that Defendants cannot create 'purported reasons for not running his ads.' He omits, however, reference to that portion of § 230 which provides immunity from suit for restricting material that is 'otherwise objectionable.'").

limiting principles. Many look to the statutory canon of ejusdem generis, which holds that catch-all phases at the end of a statutory lists should be construed in light of the other phrases.[97] In this light, section 230(c)(2) only applies to obscene, violent, or other disturbing matters.[98]

Understanding how the section 230(c)(2) litany of terms has proved difficult for courts in determining how spam filtering and filtering for various types of malware fits into the statutory framework. Most courts have ruled that "restrict[ing] access" to spam falls within the section

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[97] Washington State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler, 537 U.S. 371, 372 (2003) ("under the established interpretative canons of noscitur a sociis and ejusdem generis, where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar to those enumerated by the specific words").

[98] Darnaa, LLC v. Google, Inc., 2016 WL 6540452 at *8 (N.D. Cal. 2016) ("The context of § 230(c)(2) appears to limit the term to that which the provider or user considers sexually offensive, violent, or harassing in content."); Song Fi, Inc. v. Google, Inc., 108 F. Supp. 3d 876, 883 (N.D. Cal. 2015) ("First, when a statute provides a list of examples followed by a catchall term (or 'residual clause') like 'otherwise objectionable,' the preceding list provides a clue as to what the drafters intended the catchall provision to mean," citing Circuit City Stores v. Adams, 532 U.S. 105, 115 (2001)). This is the rationale for the canon of construction known as eiusdem generis (often misspelled ejusdem generis), which is Latin for 'of the same kind); National Numismatic v. eBay, 2008 U.S. Dist. LEXIS 109793, at *25 (M.D. Fla. Jul. 8, 2008) ("Section 230 is captioned 'Protection for 'Good Samaritan' blocking and screening of offensive material,' yet another indication that Congress was focused on potentially offensive materials, not simply any materials undesirable to a content provider or user"); Sherman v. Yahoo! Inc., 997 F. Supp. 2d 1129 (S.D. Cal. 2014) (text messages allegedly violate Telephone Consumer Protection Act; Yahoo! raised section 230(c)(2)(B) as a defense) ("The Court declines to broadly interpret 'otherwise objectionable' material to include any or all information or content. The Ninth Circuit has expressed caution at adopting an expansive interpretation of this provision where providers of blocking software 'might abuse th[e CDA] immunity to block content for anticompetitive purposes or merely at its malicious whim, under the cover of considering such material "otherwise objectionable" under § 230(c)(2)."); Goddard v. Google, Inc., 2008 U.S. Dist. LEXIS 101890 (N.D. Cal. Dec. 17, 2008) ('[i]t is difficult to accept . . . that Congress intended the general term "objectionable" to encompass an auction of potentially-counterfeit coins when the word is preceded by seven other words that describe pornography, graphic violence, obscenity, and harassment.' In the instant case, the relevant portions of Google's Content Policy require that MSSPs provide pricing and cancellation information regarding their services. These requirements relate to business norms of fair play and transparency and are beyond the scope of § 230(c)(2).").

230(c)(2) framework, although that is difficult perhaps to see as a textual matter.[99] Spam, though irritating and destructive of the online experience, does not fit clearly into the litany in section 230, at least as courts have understood this litany.

The spam cases have prompted courts to examine the thread that runs through the list in section 230. A recent Ninth Circuit case perceptively sees the challenge: On one hand, "decisions recognizing limitations in the scope of immunity [are] persuasive,"[100] and "interpreting the statute to give providers unbridled discretion to block online content would . . . enable and potentially motivate internet-service providers to act for their own, and not the public, benefit."[101] In addition, the court did recognize that "the specific categories listed in § 230(c)(2) vary greatly: [m]aterial that is lewd or lascivious is not necessarily similar to material that is violent, or material that is harassing. If the enumerated categories are not similar, they provide little or no assistance in interpreting the more general category. We have previously recognized this concept."[102]

Yet, in fact, the original purpose of the Communications Decency Act—"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

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[99] Asurvio LP v. Malwarebytes Inc., 2020 U.S. Dist. LEXIS 53906 (N.D. Cal. Mar. 26, 2020) (allegation that M is wrongfully classifying A's software as malware); 4PC Drivers Headquarters, LP v. Malwarebytes Inc., 371 F. Supp. 3d 652 (N.D. Cal. 2019) (malware); Shulman v. FACEBOOK.com, 2018 U.S. Dist. LEXIS 113076 (D.D.C. Jul. 9, 2018) (spam); Holomaxx Technologies v. Microsoft Corp., 783 F. Supp. 2d 1097 (N.D. Cal. 2011) (spam); Smith v. Trusted Universal Stds. in Elec. Transactions, Inc., 2010 U.S. Dist. LEXIS 43360 (D. N.J. May 4, 2010) (deletion of spam); e360insight v. Comcast Corp., 546 F. Supp. 2d 605 (N.D. Ill. 2008) (spam); Zango v. Kapersky Lab., 568 F.3d 1169 (9th Cir. 2009) (competitive blocking software).

[100] Enigma Software Grp. USA, v. Malwarebytes, Inc., 946 F.3d 1040, 1050 (9th Cir. 2019).

[101] Id.

[102] Id. at 1051.

material"[103]—suggests that the thread that combines section 230(c)(2)'s concepts are those materials that were objectionable in 1996 and for which there was already regulation—regulation which Congress intended section 230 to provide incentives for free markets to emulate.

The first four adjectives in subsection (c)(2), "obscene, lewd, lascivious, filthy," are found in the Comstock Act as amended in 1909.[104] The Comstock Act prohibited the mailing of "every obscene, lewd, or lascivious, and every filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character."[105] In addition, the CDA used the terms "obscene or indecent," prohibiting the transmission of "obscene or indecent message."[106] The Act's second provision declared unconstitutional in Reno v. ACLU, section 223(d), prohibits the knowing sending or displaying of "any comment, request, suggestion, proposal, image, or other communication that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs, regardless of whether the user of such service placed the call or initiated the communication."[107] This language of "patently offensive . . ." derives from the definition of indecent speech set forth in the Pacifica decision and which the FCC continues to regulate to this day.[108]

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[103] 47 U.S.C. § 230(a)(4).
[104] Section 3893 of the Revised Statutes made by section 211 of the Criminal Code, Act of March 4, 1909, c. 321, 35 Stat. 1088, 1129; United States v. Limehouse, 285 U.S. 424, 425 (1932) (stating that "Section 211 of the Criminal Code (18 USCA § 334) declares unmailable 'every obscene, lewd, or lascivious, and every filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character") (additional citation added). The phrase is repeated in numerous state statutes.
[105] Id. at 424-6.
[106] 47 U.S. § 223(a) (May 1996 Supp.).
[107] 521 U.S. 844 (1997).
[108] FCC v. Pacifica Found., 438 U.S. 726, 732 (1978) ("patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs").

The next two terms in the list "excessively violent" and "harassing" also refer to typical concerns of communications regulation which were, in fact, stated concerns of the CDA itself. Congress and the FCC have long been concerned about the effect of violent television shows, particularly upon children; indeed, concern about violence in media was an impetus of the passage of the Telecommunications Act of 1996, of which the CDA is a part. Section 551 of the Act, entitled Parental Choice in Television Programming, requires televisions over a certain size to contain a device, later known at the V-chip. This device allows viewers to block programming according to an established rating system.[109] The legislation led to ratings for broadcast television that consisted of violent programming.[110] The FCC then used this authority to require televisions to allow blocking technology.[111]

And, of course, Congress and the FCC have long regulated harassing wire communications. Section 223, Title 47, the provision which the CDA amended and into which the CDA was in part codified, is a statute that prohibits the making of "obscene or harassing"

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[109] 47 U.S.C. § 303(x). See Technology Requirements to Enable Blocking of Video Programming Based on Program Ratings, 63 Fed. Reg. 20, 131 (Apr. 23, 1998) ("[T]he Commission is amending the rules to require . . . technological features to allow parents to block the display of violent , sexual, or other programming they believe is harmful to their children. These features are commonly referred to as 'v-chip' technology."). Finding that "[t]here is a compelling governmental interest in empowering parents to limit the negative influences of video programming that is harmful to children," Congress sought to "provid[e] parents with timely information about the nature of upcoming video programming and with the technological tools" to block undesirable programming by passing the Telecommunications Act of 1996 (the "Telecommunications Act").

[110] FCC News, Commission Finds Industry Video Programming Rating System Acceptable, Report No. GN 98-3 (Mar. 12, 1998), available at https://transition.fcc.gov/Bureaus/Cable/News_Releases/1998/nrcb8003.html.

[111] Amy Fitzgerald Ryan, Don't Touch That V-Chip: A Constitutional Defense of the Television Program Rating Provisions of the Telecommunications Act of 1996, 87 Geo. L.J. 823, 825 (1999), citing Lawrie Mifflin, TV Networks Plan Ratings System, Orange County Reg., Feb. 15, 1996, at A1.

telecommunications.[112] These harassing calls include "mak[ing] or caus[ing] the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number" or "mak[ing] repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication."[113] Roughly half of the States also outlaw "harassing" wire communications via telephone.[114] Congress enacted the Telephone Consumer Protection Act (TCPA), recently upheld in most part by the Supreme Court,[115] to ban "automated or prerecorded telephone calls, regardless of the content or the initiator of the message," that are considered "to be a nuisance and an invasion of privacy."[116]

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[112] 47 U.S.C. § 223.

[113] 47 U.S.C. § 223(a)(1)(D) & (E) (2012).

[114] See, e.g., (Arizona) Ariz. Rev. Stat. § 13-2916 ("It is unlawful for any person, with intent to terrify, intimidate, threaten or harass a specific person or persons, to do any of the following: 3. Otherwise disturb by repeated anonymous, unwanted or unsolicited electronic communications the peace, quiet or right of privacy of the person at the place where the communications were received."); (California) Cal. Pen. Code § 653m(b) ("Every person who, with intent to annoy or harass, makes repeated telephone calls or makes repeated contact by means of an electronic communication device, or makes any combination of calls or contact, to another person is, whether or not conversation ensues from making the telephone call or contact by means of an electronic communication device, guilty of a misdemeanor. Nothing in this subdivision shall apply to telephone calls or electronic contacts made in good faith or during the ordinary course and scope of business."); (Maryland) Md. Code Ann., Crim. Law § 3-804 ("A person may not use telephone facilities or equipment to make: (1) an anonymous call that is reasonably expected to annoy, abuse, torment, harass, or embarrass another; (2) repeated calls with the intent to annoy, abuse, torment, harass, or embarrass another"); (Oklahoma) 21 Okl. St. § 1172 ("It shall be unlawful for a person who, by means of a telecommunication or other electronic communication device, willfully either: 6. In conspiracy or concerted action with other persons, makes repeated calls or electronic communications or simultaneous calls or electronic communications solely to harass any person at the called number(s)").

[115] Barr v. Am. Ass'n of Political Consultants, 140 S. Ct. 2335 (2020) (upholding the Act except for its debt-collection exception).

[116] Telephone Consumer Protection Act of 1991, 105 Stat. 2394, 2395, codified at 15 U.S.C. § 6101.

Thus, the cases that struggled over how to fit spam into the list of section 230(c)(2) could simply have analogized spam as similar to harassing or nuisance phone calls.

The regulatory meanings, as understood in 1996 and used in the Communications Decency Act, itself, constitute the thread that unites the meanings of "obscene, lewd, lascivious, filthy, excessively violent, and harassing." All deal with issues involving media and communications content regulation intended to create safe, family environments. Compelling that conclusion is "the presumption of consistent usage—the rule of thumb that a term generally means the same thing each time it is used . . . [particularly for] terms appearing in the same enactment."[117] To ensure clear and consistent interpretations of the terms used in subsection 230(c)(2), NTIA requests, therefore, that the FCC add the below Subpart E to 47 CFR Chapter I:

> **Subpart E. Clarifying Subsection 230(c)(2).**
> § 130.02
> As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:
>
> **(a) "obscene," "lewd," "lascivious," and "filthy"**
> The terms "obscene," "lewd," "lascivious," and "filthy" mean material that:
> i. taken as a whole, appeals to the prurient interest in sex or portrays sexual conduct in a patently offensive way, and which, taken as a whole, does not have serious literary, artistic, political, or scientific value;
> ii. depicts or describes sexual or excretory organs or activities in terms patently offensive as measured by contemporary community standards; to the average person, applying contemporary community standards; or
> iii. signifies the form of immorality which has relation to sexual impurity, and have the same meaning as is given them at common law in prosecutions for obscene libel.
>
> **(b) "excessively violent"**
> The term "excessively violent" means material that:
> i. is likely to be deemed violent and for mature audiences according the Federal Communications Commission's V-chip regulatory regime and TV Parental Guidance, promulgated pursuant to Section 551 of the 1996

[117] United States v. Castleman, 572 U.S. 157, 174 (2014), citing IBP, Inc. v. Alvarez, 546 U.S. 21, 33–34 (2005) (Scalia, J., conc.).

Telecommunications Act, Pub. L. No. 104-104, § 551, 110 Stat. 139-42 (codified at 47 U.S.C. § 303; § 330(c)(4)); or

ii. constitutes or intends to advocate domestic terrorism or international terrorism, each as defined in 18 U.S.C. § 2331 ("terrorism").

(c) "harassing"

The term "harassing" means any material that:

i. that sent by an information content provider that has the subjective intent to abuse, threaten, or harass any specific person and is lacking in any serious literary, artistic, political, or scientific value;

ii. regulated by the CAN-SPAM Act of 2003, 117 Stat. 2699; or

iii. that is malicious computer code intended (whether or not by the immediate disseminator) to damage or interfere with the operation of a computer.

(d) "otherwise objectionable"

The term "otherwise objectionable" means any material that is similar in type to obscene, lewd, lascivious, filthy, excessively violent, or harassing materials.

b. "Good faith"

The phrase "good faith" in section 230(c) is also ambiguous. On one hand, most courts, in interpreting the phrase, have looked to pretext, dishonesty, or refusing to explain wrongful behavior when finding good faith or lack thereof in the removal of content. As the United States Court of Appeals for the Ninth Circuit explains, "unless § 230(c)(2)(B) imposes some good faith limitation on what a blocking software provider can consider 'otherwise objectionable' . . . immunity might stretch to cover conduct Congress very likely did not intend to immunize." Under the generous coverage of section 230(c)(2)(B)'s immunity language, a blocking software provider might abuse that immunity to block content for anticompetitive purposes or merely at its malicious whim, under the cover of considering such material "otherwise objectionable."[118] At the same time, some courts, focusing the words "the provider or user considers to be

[118] Zango, 568 F.3d at 1178 (Fisher, J., concurring). The Ninth Circuit has adopted Judge Fisher's reasoning. See Enigma, 946 F.3d at 1049.

obscene," see the provision's immunity available whenever an interactive computer service simply claims to consider the material as fitting within the provision's categories. Thus, "good faith" simply means the existence of some "subjective intent."[119]

Good faith requires transparency about content moderation disputes processes. In order to qualify for section 230(c)(2)'s immunity, a social media platform, or any interactive computer service, must demonstrate in a transparent way that when it takes action pursuant to section 230(c)(2), it provides adequate notice, reasoned explanation, or a meaningful opportunity to be heard."[120]

To ensure clear and consistent interpretation of the "good faith" standard, NTIA requests that the FCC further add the below to newly requested 47 CFR Chapter I Subchapter E Section 130.02:

> **(e) "good faith"**
> A platform restricts access to or availability of specific material (including, without limitation, its scope or reach) by itself, any agent, or any unrelated party in "good faith" under 47 U.S.C. § (c)(2)(A) if it:
>
> i. restricts access to or availability of material or bars or refuses service to any person consistent with publicly available terms of service or use that state plainly and with particularity the criteria the interactive computer service employs in its content-moderation practices, including by any partially or fully automated processes, and that are in effect on the date such content is first posted;
> ii. has an objectively reasonable belief that the material falls within one of the listed categories set forth in 47 U.S.C. § 230(c)(2)(A);
> iii. does not restrict access to or availability of material on deceptive or pretextual grounds, and does not apply its terms of service or use to restrict access to or availability of material that is similarly situated to material that the interactive computer service intentionally declines to restrict; and
> iv. supplies the interactive computer service of the material with timely notice describing with particularity the interactive computer service's reasonable factual basis for the restriction of access and a meaningful opportunity to respond, unless the interactive computer service has an objectively

[119] Domen, 433 F.Supp. 3d 592.
[120] E.O. 13925, Sec. 2(b).

reasonable belief that the content is related to criminal activity or such notice would risk imminent physical harm to others.

3. Section 230(c)(1) and 230(f)(3)

Section 230(c)(1) places "information content providers," i.e., entities that create and post content, outside its protections. This means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the internet, does not receive the statute's shield. Numerous cases have found that interactive computer service's designs and policies render it an internet content provider, outside of section 230(c)(1)'s protection. But the point at which a platform's form and policies are so intertwined with users' postings so as to render the platform an "information content provider" is not clear.

Courts have proposed numerous interpretations, most influentially in the Ninth Circuit in Fair Housing Council of San Fernando Valley v. Roommates.Com.[121] There, the court found that "[b]y requiring subscribers to provide the information as a condition of accessing its service, and by providing a limited set of pre-populated answers, Roommate becomes much more than a passive transmitter of information."[122] The court continued, "[w]e interpret the term 'development' as referring not merely to augmenting the content generally, but to materially contributing to its alleged unlawfulness. In other words, a website helps to develop unlawful content, and thus falls within the exception to section 230, if it contributes materially to the alleged illegality of the conduct."[123] But, this definition has failed to provide clear guidance, with courts struggling to define "material contribution."[124]

[121] Fair Hous. Council, 521 F.3d at 1166.
[122] Id.
[123] Id. at 1167–68 (emphasis added); see also Dirty World Entertainment, 755 F.3d at 411.
[124] See, e.g., People v. Bollaert, 248 Cal. App. 4th 699, 717 (2016).

Further, not all courts accept the material contribution standard. The Seventh Circuit concludes that "[a] company can, however, be liable for creating and posting, inducing another to post, or otherwise actively participating in the posting of a defamatory statement in a forum that that company maintains."[125] Other circuits conclude that a website becomes an information content provider by "solicit[ing] requests" for the information and then "pa[ying] researchers to obtain it."[126]

This confusion stems from the difference between the way an online bulletin board worked in the 1990s, which simply posted content, and how social media works today. As Federal Trade Commissioner Rohit Chopra explained, new social media shape and control information and online experience often as an expression of platforms' and their advertisers' goals rather than their users':

> "[Section 230] seeks to foster an environment where information and ideas can flourish. If a company is just helping move information from point A to point B, that company is just like the mail carrier or the telegraph company. That makes sense . . . . But the tech market has dramatically shifted in the decades since this law was enacted . . . . I would argue that once platforms started prioritizing their paid predictions, the content became more a reflection of advertisers targeting users, than users' own preferences."[127]

In light of modern technology, the FCC should clarify the circumstances under which an interactive computer service becomes an information content provider. Interactive computer services that editorialize particular user comments by adding special responses or warnings appear to develop and create content in any normal use of the words. Analogously, district

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[125] Huon v. Denton, 841 F.3d 733, 742 (7th Cir. 2016).
[126] FTC v. Accusearch Inc., 570 F.3d 1187, 1199–1200 (10th Cir. 2009).
[127] Rohit Chopra, Tech Platforms, Content Creators, and Immunity, American Bar Association, Section of Antitrust Law Annual Spring Meeting, Washington, D.C. (Mar. 28, 2019) (transcript available online at https://www.ftc.gov/system/files/documents/public_statements/1510713/chopra_-_aba_spring_meeting_3-28-19_0.pdf (last visited June 15, 2020)).

courts have concluded that when interactive computer services' "employees . . . authored comments," the interactive computer services would become content providers.[128] In addition, prioritization of content under a variety of techniques, particularly when it appears to reflect a particularly viewpoint, might render an entire platform a vehicle for expression and thus an information content provider.

To clarify when interactive computer services become information content providers through developing and creating content through the presentation of user-provided material, NTIA requests that the FCC add the below Subpart E to 47 CFR Chapter I:

> **Subpart E. Clarifying Subsection 230(f)(2).**
> § 130.03
> As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:
>
> For purposes of 47 U.S.C. § 230(f)(3), "responsible, in whole or in part, for the creation or development of information" includes substantively contributing to, modifying, altering, presenting or prioritizing with a reasonably discernible viewpoint, commenting upon, or editorializing about content provided by another information content provider.

4. "Treated as a Publisher or Speaker"

Finally, the ambiguous term "treated as a publisher or speaker" is a fundamental question for interpreting that courts in general have not addressed squarely. One of the animating concerns for section 230 was court decisions holding online platforms liable as publishers for third-party speech, when in fact they were merely passive bulletin boards. By prohibiting an interactive computer service from being "treated" as a publisher or speaker, therefore, section 230 could be interpreted as not converting non-publisher platforms into publishers simply because they passively transmit third-party content. That does not, however, mean that the

[128] Huon, 841 F.3d at 742.

statute meant to immunize online platforms when they actually act as publishers and exert significant control over the third-party speech and the message it conveys.

FCC Chairman Pai made a similar point by asking if selective content moderation based on ideology eventually becomes "editorial judgment":

> Are these tech giants running impartial digital platforms over which they don't exercise editorial judgment when it comes to content? Or do they in fact decide what speech is allowed and what is not and discriminate based on ideology and/or political affiliation? [129]

If content-moderating can never, no matter how extreme or arbitrary, become editorializing that no longer remains the "speech of another," then section 230(c)(1) will subsume section 230(c)(2) and eliminate liability for all interactive computer services' decisions to restrict content. Interpreting "speaker or publisher" so broadly is especially harmful when platforms are opaque and deceptive in their content-monitoring policies.

This concern is hardly theoretical, given the highly inconsistent, baffling, and even ideologically driven content moderating decisions that the large interactive computer services have made, at least according to numerous accounts. For instance, one interactive computer service made the editorial decision to exclude legal content pertaining to firearms,[130] content that was deemed acceptable for broadcast television,[131] thereby chilling the speech of a political candidate supportive of gun rights. Another interactive computer service has suppressed the

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[129] Ajit Pai, What I Hope to Learn from the Tech Giants, FCC Blog (Sept. 4, 2018), https://www.fcc.gov/news-events/blog/2018/09/04/what-i-hope-learn-tech-giants.
[130] Facebook, Inc., Facebook Prohibited Content: 7. Weapons, Ammunition, or Explosives, https://www.facebook.com/policies/ads/prohibited_content/weapons (last visited June 15, 2020).
[131] Maria Schultz, Facebook pulls ad from gun-toting Georgia candidate taking on Antifa: 'Big Tech censorship of conservatives must end', Fox News (June 6, 2020), https://www.foxnews.com/politics/facebook-pulls-ad-from-gun-toting-georgia-candidate-big-tech-censorship-of-conservatives-must-end.

speech of an American politician for "glorifying violence"[132] while permitting that of a foreign politician glorifying violence to pass without action,[133] as publicly noted by the FCC Chairman.[134] Still another interactive computer service, purporting to be a document repository and editing service,[135] deleted a controversial paper about a potential therapy for COVID-19,[136] stating simply that it was in violation of the site terms of service.[137] A major food-workers' union has objected to social media-implemented internal communication networks for companies, or "intranets," implementing automated censorship to prevent discussions of unionization.[138]

At common law, as a general matter, one is liable for defamation only if one makes "an affirmative act of publication to a third party."[139] This "affirmative act requirement" ordinarily

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[132] Alex Hern, Twitter hides Donald Trump tweet for 'glorifying violence', The Guardian (May 29, 2020), https://www.theguardian.com/technology/2020/may/29/twitter-hides-donald-trump-tweet-glorifying-violence.
[133] White House official Twitter account (May 29, 2020), https://twitter.com/WhiteHouse/status/1266367168603721728.
[134] Ajit Pai verified Twitter account (May 29, 2020), https://twitter.com/AjitPaiFCC/status/1266368492258816002.
[135] Google, Inc., Google Docs "About" page, https://www.google.com/docs/about/ (last visited June 15, 2020) ("Google Docs brings your documents to life with smart editing and styling tools to help you easily format text and paragraphs. Choose from hundreds of fonts, add links, images, and drawings. All for free . . . . Access, create, and edit your documents wherever you go — from your phone, tablet, or computer — even when there's no connection.").
[136] Thomas R. Broker, et al., An Effective Treatment for Coronavirus (COVID-19), (Mar. 13, 2020), page archived at https://archive.is/BvzkY (last visited June 15, 2020).
[137] Google, Inc., Google Docs result for https://docs.google.com/document/d/e/2PACX-1vTi-g18ftNZUMRAj2SwRPodtscFio7bJ7GdNgbJAGbdfF67WuRJB3ZsidgpidB2eocFHAVjIL-7deJ7/pub (last visited June 15, 2020) ("We're sorry. You can't access this item because it is in violation of our Terms of Service.").
[138] United Food and Commercial Workers International Union, Facebook Censorship of Worker Efforts to Unionize Threatens Push to Strengthen Protections for Essential Workers During COVID-19 Pandemic (June 12, 2020), http://www.ufcw.org/2020/06/12/censorship/.
[139] Benjamin C. Zipursky, Online Defamation, Legal Concepts, and the Good Samaritan, 51 Val. U. L. Rev. 1, 18 (2016) , available at https://scholar.valpo.edu/cgi/viewcontent.cgi?article=2426&context=vulr.

"depict[s] the defendant as part of the initial making or publishing of a statement."[140] The common law also recognized a "narrow exception to the rule that there must be an affirmative act of publishing a statement."[141] A person "while not actually publishing—will be subjected to liability for the reputational injury that is attributable to the defendant's failure to remove a defamatory statement published by another person."[142] Such a duty might apply where a defendant has undertaken an affirmative duty to remove. Stratton Oakmont embodies the latter idea: The court held that Prodigy, having undertaken to moderate some content on its page, thereby assumed an affirmative duty to moderate all content on its site. At common law, then, the publication element of defamation could be satisfied either through the rule—an affirmative act—or the exception—an omission where an affirmative duty applies.

Section 230(c)(1)'s "treated as the publisher or speaker" could plausibly be understood to foreclose liability only if a defendant would satisfy the exception. Satisfying the exception subjects one to defamation liability as if he were the publisher or speaker of the content, although he did not "actually publish[]" the content.[143] He is not a "true publisher" in the sense of satisfying the affirmative act requirement, but he is deemed or regarded as if he were because he had an affirmative duty to moderate.[144] This interpretation of section 230(c)(1) reads it to foreclose the very argument courts may have been on track to embrace after Stratton Oakmont, viz., that a platform has an affirmative duty to remove defamatory content and will be treated as satisfying the publication element of defamation for nonfeasance in the same way as a true publisher. Section 230(c)(1) states—in the face of Stratton Oakmont's contrary holding—a

[140] Id. at 19.
[141] Id. at 20.
[142] Id. at 21 (citing Restatement (Second) of Torts § 577(2) (Am. Law Inst. 1977)).
[143] Zipursky, 51 Val. L. Rev. at 21.
[144] Id. at 45.

general rule: There is no affirmative duty to remove. For that reason, section 230(c)(1) should be construed to concern only failures to remove and not takedowns, and not to apply when a platform "actually publishes" content.

NTIA suggests that the FCC can clarify the ambiguous phrase "speaker or publisher" by establishing that section 230(c)(1) does not immunize the conduct of an interactive service provider that is actually acting as a publisher or speaker in the traditional sense. Two points follow. First, when a platform moderates outside of section 230(c)(2)(A), section 230(c)(1) does not provide an additional, broader immunity that shields content takedowns more generally. Such affirmative acts are outside of the scope of (c)(1). Second, when a platform reviews third-party content already displayed on the internet and affirmatively vouches for it, editorializes, recommends, or promotes such content on the basis of the content's substance or message, the platform receives no section 230(c)(1) immunity. NTIA therefore requests that the FCC further add the below to newly requested Subpart E to 47 CFR Chapter I:

Subpart E. Clarifying Subsection 230(f)(2).

§ 130.04

(c) An interactive computer service is not being "treated as the publisher or speaker of any information provided by another information content provider" when it actually publishes its own or third-party content. Circumstances in which an interactive computer service actually publishes content include when:

(i) it affirmatively solicits or selects to display information or content either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool pursuant to a reasonably discernible viewpoint or message, without having been prompted to, asked to, or searched for by the user; and
(ii) it reviews third-party content already displayed on the Internet and affirmatively vouches for, editorializes, recommends, or promotes such content to other Internet users on the basis of the content's substance or messages. This paragraph applies to a review conducted, and a recommendation made, either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool.

(d) An interactive computer service does not publish content merely by:

(i) providing content in a form or manner that the user chooses, such as non-chronological order, explicit user preferences, or because a default setting of the service provides it, and the interactive computer service fully informs the user of this default and allows its disabling; or

(ii) transmitting, displaying, or otherwise distributing such content, or merely by virtue of moderating third-party content consistent with a good faith application of its terms of service in force at the time content is first posted. Such an interactive computer service may not, by virtue of such conduct, be "treated as a publisher or speaker" of that third-party content. 47 U.S.C. § 230(c)(1).

VI. Title I and Sections 163 and 257 of the Act Permit the FCC to Impose Disclosure Requirements on Information Services

With roots in the Modified Final Judgment for the break-up of AT&T[145] and codified by the Telecommunications Act of 1996,[146] the term "information service" refers to making information available via telecommunications. Under FCC and judicial precedent, social media sites are "information services." As such, courts have long recognized the Commission's power to require disclosure of these services under sections 163 and 257.

A. Social media are information services

Section 230(f)(2) explicitly classifies "interactive computer services" as "information services," as defined in 47 U.S.C. § 153(20).[147] Further, social media fits the FCC's definition of

[145] United States v. Am. Tel. & Tel. Co., 552 F. Supp. 131, 179 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) (observing that "'Information services' are defined in the proposed decree at Section IV(J) as: the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information which may be conveyed via telecommunications").

[146] 47 U.S.C. § 153(24).

[147] Id. ("[T]he offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.").

enhanced services.[148] In Brand X, the Supreme Court explained, "The definitions of the terms 'telecommunications service' and 'information service' established by the 1996 Act are similar to the Computer II basic-and enhanced-service classifications" with "'information service'—the analog to enhanced service."[149]

Numerous courts have ruled that search engines, browsers and internet social media precursors such as chat rooms are information services.[150] Courts have long recognized edge providers as information services under Title I. For example, in Barnes, the U.S. Court of Appeals for the Ninth Circuit classifies Yahoo's social networking services an "information service," interchangeably with "interactive computer service," and in Howard v. Am. Online, the same court designates America Online's messaging facilities "enhanced services."[151]

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[148] 47 CFR § 64.702 ("[S]ervices, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information.").

[149] Nat'l Cable & Telecommunications Ass'n v. Brand X Internet Servs., 545 U.S. 967, 977 (2005).

[150] Mozilla Corp. v. F.C.C., 940 F.3d 1, 34 (D.C. Cir. 2019) ("But quite apart from the fact that the role of ISP-provided browsers and search engines appears very modest compared to that of DNS and caching in ISPs' overall provision of Internet access, Petitioners are in a weak posture to deny that inclusion of 'search engines and web browsers' could support an 'information service' designation . . . since those appear to be examples of the 'walled garden' services that Petitioners hold up as models of 'information service'-eligible offerings in their gloss of Brand X.") (internal citations omitted); FTC v. Am. eVoice, Ltd., 242 F. Supp. 3d 1119 (D. Mont. 2017) (Email and online "chat rooms" "were enhanced services because they utilized transmission lines to function, as opposed to acting as a pipeline for the transfer of information . . . . 'This conclusion is reasonable because e-mail fits the definition of an enhanced service.'" (quoting Howard v. Am. Online Inc., 208 F.3d 741, 746 (9th Cir. 2000)). "Also excluded from coverage are all information services, such as Internet service providers or services such as Prodigy and America-On-Line." H.R. Rep. No. 103-827, at 18 (1994), as reprinted in 1994 U.S.C.C.A.N. 3489, 3498

[151] Barnes, 570 F.3d at 1101.

B. Several statutory sections empower the FCC to mandate disclosure

Beyond having jurisdiction over social media as information services, the FCC has clear statutory authority to impose disclosure requirements under sections 163 and 257 of the Communications Act. Section 163 charges the FCC to "consider all forms of competition, including the effect of intermodal competition, facilities-based competition, and competition from new and emergent communications services, including the provision of content and communications using the Internet" and "assess whether laws, regulations, regulatory practices . . . pose a barrier to competitive entry into the communications marketplace or to the competitive expansion of existing providers of communications services."[152] Section 257(a) of the Communications Act requires the FCC to examine market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services."[153]

In its 2018 Internet Order, the Commission relied on section 257 to impose service transparency requirements on providers of the information service of broadband internet access. It reasoned that doing so would reduce entry barriers.[154] Similar reasoning applies to requiring transparency for social media. Clear, current, readily accessible and understandable descriptions of an interactive computer service provider's content moderation policies would help enterprising content providers fashion their offerings so that they can be provided across multiple

[152] 47 U.S.C. § 163.
[153] 47 U.S.C. § 257(a) (2018). While section 257 was amended and repealed in part, its authority remained intact in section 163. "Congress emphasized that '[n]othing in this title [the amendment to the Telecommunications Act creating section 163] or the amendments made by this title shall be construed to expand or contract the authority of the Commission." Mozilla, 940 F.3d at 47 citing Pub. L. No. 115-141, Div. P, § 403, 132 Stat. at 1090.
[154] Federal Communications Commission, In the Matter of Restoring Internet Freedom, 33 F.C.C. Rcd. 311 (2018).

platforms with reduced costs and friction for the provider and fewer disruptions to user experiences.[155]

Perhaps more important, information about an interactive computer service provider's content moderation policies would help entities design filtering products that could improve the providers' implementation of those policies, or assist consumers in remedying the gaps they may see in the providers' policies. Certainly, empowering consumers with blocking technologies that they choose and control—rather than accepting a platform's top-down centralized decisions, would directly advance section 230's policy of encouraging "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."[156] Increasing transparency about online platforms' content moderation practices would also enable users to make more informed choices about competitive alternatives.

Consumers today have a one-way relationship with social media transparency; platforms know everything about consumers, but consumers know very little about how or why platforms exercise influence or direct control over consumers' speech. Certain information disappears or becomes difficult to find, while other information is promoted and prominently displayed. Inevitably, some consumers and content creators begin to worry that secretive forces within platform providers are manipulating social media for ends that can only be guessed at.[157] Such suspicion is inevitable when there is so little transparency about the process behind the social media visibility of user-provided content, even when policies are applied fairly and no

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[155] See supra Section IV.
[156] 47 U.S.C. § 230(a)(3).
[157] Rod Dreher, Google Blacklists Conservative Websites (July 21, 2020), https://www.theamericanconservative.com/dreher/google-blacklists-conservative-websites/.

wrongdoing has taken place. By increasing transparency to consumers, platforms would ensure that consumers can choose to consume social media whose policies they agree with without fear that manipulations to which they did not consent are happening behind the scenes.

The importance of disclosure to our communications networks cannot be underestimated. Chairman Pai recognizes that democracies must require transparency and to ensure the proper function of essential communications networks.[158] That is why, when eliminating Title II common carrier so-called "network neutrality" regulations, Chairman Pai's FCC retained Title I disclosure requirements for broadband access service providers.

The same is true for other information service providers. Speaking of the social media platforms, FCC Chairman Ajit Pai asked "how do these companies make decisions about what we see and what we don't? And who makes those decisions?"[159] For social media, it is particularly important to ensure that large firms avoid "deceptive or pretextual actions stifling free and open debate by censoring certain viewpoints,"[160] or engage in deceptive or pretextual actions (often contrary to their stated terms of service) to stifle viewpoints with which they disagree."[161]

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[158] Federal Communications Commission, In the Matter of Restoring Internet Freedom, WC Docket No. 17-108, Declaratory Ruling, Report And Order, And Order (Jan, 4, 2018) ¶ 209, available at https://www.fcc.gov/document/fcc-releases-restoring-internet-freedom-order ("'Sunlight,' Justice Brandeis famously noted, 'is . . . the best of disinfectants.' This is the case in our domain. Properly tailored transparency disclosures provide valuable information to the Commission to enable it to meet its statutory obligation to observe the communications marketplace to monitor the introduction of new services and technologies, and to identify and eliminate potential marketplace barriers for the provision of information services. Such disclosures also provide valuable information to other Internet ecosystem participants.").

[159] Ajit Pai, What I Hope to Learn from the Tech Giants (Sept. 4, 2018), https://www.fcc.gov/news-events/blog/2018/09/04/what-i-hope-learn-tech-giants (last visited June 15, 2020).

[160] E.O. 13925, Section 2(a).

[161] Id.

To prevent these ends, NTIA requests that the FCC further add the below to Subpart E to 47 CFR Chapter I Subchapter A Part 8:

§ 8.2 Transparency for Interactive Computer Services.

Any person providing an interactive computer service in a manner through a mass-market retail offering to the public shall publicly disclose accurate information regarding its content-management mechanisms as well as any other content moderation, promotion, and other curation practices of its interactive computer service sufficient to enable (i) consumers to make informed choices regarding the purchase and use of such service and (ii) entrepreneurs and other small businesses to develop, market, and maintain offerings by means of such service. Such disclosure shall be made via a publicly available, easily accessible website or through transmittal to the Commission.

VII. Conclusion

For the foregoing reasons, NTIA respectfully requests that the Commission institute a rulemaking to interpret Section 230 of the Communications Act.

Respectfully submitted,

_____
Douglas Kinkoph
Performing the Delegated Duties of the
Assistant Secretary for Commerce for
Communications and Information

July 27, 2020

APPENDIX A: Proposed Rules

47 CFR Chapter I, Subchapter E
Part 130 – Section 230 of the Communications Decency Act.

Interpreting Subsection 230(c)(1) and Its Interaction With Subsection 230(c)(2).
§ 130.01
As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

(a) 47 U.S.C. 230(c)(1) applies to an interactive computer service for claims arising from failure to remove information provided by another information content provider. Section 230(c)(1) has no application to any interactive computer service's decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service. Any applicable immunity for matters described in the immediately preceding sentence shall be provided solely by 47 U.S.C. § 230(c)(2).

(b) An interactive computer service is not a publisher or speaker of information provided by another information content provider solely on account of actions voluntarily taken in good faith to restrict access to or availability of specific material in accordance with subsection (c)(2)(A) or consistent with its terms of service or use.

(c) An interactive computer service is not being "treated as the publisher or speaker of any information provided by another information content provider" when it actually publishes its own or third-party content. Circumstances in which an interactive computer service actually publishes content include when:

(i) it affirmatively solicits or selects to display information or content either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool pursuant to a reasonably discernible viewpoint or message, without having been prompted to, asked to, or searched for by the user;

(ii) it reviews third-party content already displayed on the Internet and affirmatively vouches for, editorializes, recommends, or promotes such content to other Internet users on the basis of the content's substance. This paragraph applies to a review conducted, and a recommendation made, either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool.

(d) An interactive computer service does not publish content merely by:

(1) providing content in a form or manner that the user chooses, such as non-chronological order, explicit user preferences, or because a default

setting of the service provides it, and the interactive computer service fully informs the user of this default and allows its disabling; or
(2) transmitting, displaying, or otherwise distributing such content, or merely by virtue of moderating third-party content consistent with a good faith application of its terms of service in force at the time content is first posted. Such an interactive computer service may not, by virtue of such conduct, be "treated as a publisher or speaker" of that third-party content. 47 U.S.C. § 230(c)(1).

Clarifying Subsection 230(c)(2).
§ 130.02
As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

(a) "obscene," "lewd," lascivious" and "filthy"
The terms "obscene," "lewd," "lascivious," and "filthy" mean material that

iv. taken as a whole, appeals to the prurient interest in sex or portrays sexual conduct in a patently offensive way, and which, taken as a whole, does not have serious literary, artistic, political, or scientific value;
v. depicts or describes sexual or excretory organs or activities in terms patently offensive as measured by contemporary community standards; to the average person, applying contemporary community standards; or
vi. signifies the form of immorality which has relation to sexual impurity, and have the same meaning as is given them at common law in prosecutions for obscene libel.

(b) "excessively violent"
The term "excessively violent" means material that

iii. is likely to be deemed violent and for mature audiences according the Federal Communications Commission's V-chip regulatory regime and TV Parental Guidance, promulgated pursuant to Section 551 of the 1996 Telecommunications Act Pub. L. No. 104-104, § 551, 110 Stat. 139-42 (codified at 47 U.S.C. § 303; § 330(c)(4));
iv. constitutes or intends to advocate domestic terrorism or international terrorism, each as defined in 18 U.S.C. § 2331 ("terrorism").

(c) "harassing"
The term "harassing" means any material that

iv. that sent by an information content provider that has the subjective intent to abuse, threaten, or harass any specific person and is lacking in any serious literary, artistic, political, or scientific value;
v. regulated by the CAN-SPAM Act of 2003, 117 Stat. 2699; or
vi. that is malicious computer code intended (whether or not by the immediate disseminator) to damage or interfere with the operation of a computer.

(d) "otherwise objectionable"
The term "otherwise objectionable" means any material that is similar in type to obscene, lewd, lascivious, filthy, excessively violent, or harassing materials.

(e) "good faith"

A platform restricts access to or availability of specific material (including, without limitation, its scope or reach) by itself, any agent, or any unrelated party in "good faith" under 47 U.S.C. § (c)(2)(A) if it:

v. restricts access to or availability of material or bars or refuses service to any person consistent with publicly available terms of service or use that state plainly and with particularity the criteria the interactive computer service employs in its content-moderation practices, including by any partially or fully automated processes, and that are in effect on the date such content is first posted;

vi. has an objectively reasonable belief that the material falls within one of the listed categories set forth in 47 U.S.C. § 230(c)(2)(A);

vii. does not restrict access to or availability of material on deceptive or pretextual grounds, and does not apply its terms of service or use to restrict access to or availability of material that is similarly situated to material that the interactive computer service intentionally declines to restrict; and

viii. supplies the interactive computer service of the material with timely notice describing with particularity the interactive computer service's reasonable factual basis for the restriction of access and a meaningful opportunity to respond, unless the interactive computer service has an objectively reasonable belief that the content is related to criminal activity or such notice would risk imminent physical harm to others.

Clarifying Subsection 230(f)(2).

§ 130.03

As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

For purposes of 47 U.S.C. § 230(f)(3), "responsible, in whole or in part, for the creation or development of information" includes substantively contributing to, modifying, altering, presenting with a reasonably discernible viewpoint, commenting upon, or editorializing about content provided by another information content provider.

47 CFR Chapter I Subchapter A Part 8 ---Internet Freedom.

§ 8.2 Transparency for Interactive Computer Services.

Any person providing an interactive computer service in a manner through a mass-market retail offering to the public shall publicly disclose accurate information regarding its content-management mechanisms as well as any other content moderation, promotion, and other curation practices of its interactive computer service sufficient to enable (i) consumers to make informed choices regarding the purchase and use of such service and (ii) entrepreneurs and other small businesses to develop, market, and maintain offerings by means of such service. Such disclosure shall be made via a publicly available, easily accessible website or through transmittal to the Commission.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Section 230 of the	)	File No. RM-_____
Communications Act of 1934	)	

To: The Commission

PETITION FOR RULEMAKING OF THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

National Telecommunications and
Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230
(202) 482-1816

July 27, 2020

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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Section 230 of the	)	File No. RM-_____
Communications Act of 1934	)	

To: The Commission

PETITION FOR RULEMAKING OF THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

Pursuant to section 1.401 of the Code of Federal Regulations,[1] in accordance with Executive Order 13925 (E.O. 13925),[2] and through the National Telecommunications and Information Administration (NTIA), the Secretary of Commerce (Secretary) respectfully requests that the Federal Communications Commission (FCC or Commission) initiate a rulemaking to clarify the provisions of section 230 of the Communications Act of 1934, as amended.[3] NTIA, as the President's principal adviser on domestic and international telecommunications and information policy, is charged with developing and advocating policies concerning the regulation of the telecommunications industry and "ensur[ing] that the views of the executive branch on telecommunications matters are effectively presented to the Commission . . . ."[4] Specifically, per E.O. 13925, NTIA requests that the Commission propose rules to clarify:

[1] 47 CFR § 1.401(a).
[2] Exec. Order No. 13925: Preventing Online Censorship, 85 Fed. Reg. 34,079 (June 2, 2020) (E.O. 13925).
[3] 47 U.S.C. § 230.
[4] 47 U.S.C. § 902(b)(2)(J); see also 47 U.S.C. §§ 901(c)(3), 902(b)(2)(I) (setting forth related duties).

(i) the interaction between subparagraphs (c)(1) and (c)(2) of section 230, in particular to clarify and determine the circumstances under which a provider of an interactive computer service that restricts access to content in a manner not specifically protected by subparagraph (c)(2)(a) may also not be able to claim protection under subparagraph (c)(1);[5]

(ii) the conditions under which an action restricting access to or availability of material is not "taken in good faith" within the meaning of subparagraph (c)(2)(A) of section 230, particularly whether actions can be "taken in good faith" if they are

(A) deceptive, pretextual, or inconsistent with a provider's terms of service; or

(B) taken after failing to provide adequate notice, reasoned explanation, or a meaningful opportunity to be heard;[6] and

(iii) any another proposed regulation that NTIA concludes may be appropriate to advance the policy described in subsection (a) of E.O. 13925, to impose disclosure requirements similar those imposed on other internet companies, such as major broadband service providers, to promote free and open debate on the internet.[7]

[5] See infra sections V.E.1, V.E.3 and section V.E.4.
[6] See infra section V.E.2.
[7] See infra section VI.

I. Statement of Interest

Since its inception in 1978, NTIA has consistently supported pro-competitive, pro-consumer telecommunications and internet policies. NTIA files this petition pursuant to E.O. 13925 to ensure that section 230 of the Communications Act of 1934, as amended, continues to further these goals. The President, through E.O. 13925, has directed the Secretary to file this petition for rulemaking through NTIA.[8]

II. Summary of Argument

Freedom of expression defends all our other freedoms. Only in a society that protects free expression can citizens criticize their leaders without fear, check their excesses, and expose their abuses. As Ben Franklin stated, "[w]hoever would overthrow the Liberty of a Nation, must begin by subduing the Freeness of Speech."[9] However, social media and its growing dominance present troubling questions on how to preserve First Amendment ideals and promote diversity of voices in modern communications technology. Social media's power stems in part from the legal immunities granted by the Communications Decency Act of 1996.[10] Congress passed the statute in the beginning of the internet age with the goal of creating a safe internet for children. It did so by protecting children from pornography and providing incentives for platforms to

[8] E.O. 13925, Section 2(b).
[9] Benjamin Franklin, Silence Dogood No. 8, The New-England Courant, July 9, 1722.
[10] Communications Decency Act of 1996 (CDA), Pub. L. No. 104-104, 110 Stat. 133, Title V—Obscenity and Violence, § 509 "Online family empowerment," codified at 47 U.S.C. 230, "Protection for private blocking and screening of offensive material." The CDA was incorporated as Title V to the Telecommunications Act of 1996, which in turn, was incorporated in the Communications Act of 1934. While these laws are all now part of the same statute, they do have separate histories and will be referred to individually when necessary.

remove harmful content. While the Supreme Court struck down the provisions limiting pornography, section 230 remained.[11]

Section 230 is the legislative response to a New York state case, Stratton Oakmont, Inc. v. Prodigy Servs. Co.[12] In this case, the court extended tort liability to internet bulletin boards and ruled that defendant Prodigy Services Company would be liable for the entire content of their platform if they engaged in editing and moderation to remove distasteful content.[13] Congress intended section 230 to offer platforms immunity from liability under certain circumstances, namely to encourage platforms to moderate specific types of material, mostly that are sexual or inappropriate to minors. It is vital to remember, however, that Congress in section 230 also had the express purpose of ensuring that the "Internet and other [internet platforms] offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity."[14]

Times have changed, and the liability rules appropriate in 1996 may no longer further Congress's purpose that section 230 further a "true diversity of political discourse." A handful of large social media platforms delivering varied types of content over high-speed internet have replaced the sprawling world of dial-up Internet Service Providers (ISPs) and countless bulletin boards hosting static postings. Further, with artificial intelligence and automated methods of textual analysis to flag harmful content now available, unlike at the time of Stratton Oakmont, Inc., platforms no longer need to manually review each individual post but can review, at much

[11] Reno v. American Civil Liberties Union, 521 U.S. 844 (1997).
[12] 1995 WL 323710 (N.Y. Sup. Ct., May 24, 1995) (unpublished). See also, Force v. Facebook, Inc., 934 F.3d 53, 63-64 (2d Cir. 2019) ("To overrule Stratton . . . .").
[13] Stratton Oakmont, 1995 WL 323710, at *3.
[14] 47 U.S.C. § 230(a)(3).

lower cost, millions of posts.[15] Thus, the fundamental assumptions driving early section 230 interpretation are antiquated and lack force, thus necessitating a recalibration of section 230 protections to accommodate modern platforms and technologies.

The FCC should use its authorities to clarify ambiguities in section 230 so as to make its interpretation appropriate to the current internet marketplace and provide clearer guidance to courts, platforms, and users. NTIA urges the FCC to promulgate rules addressing the following points:

1. Clarify the relationship between subsections (c)(1) and (c)(2), lest they be read and applied in a manner that renders (c)(2) superfluous as some courts appear to be doing.

2. Specify that Section 230(c)(1) has no application to any interactive computer service's decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service.

3. Provide clearer guidance to courts, platforms, and users, on what content falls within (c)(2) immunity, particularly section 230(c)(2)'s "otherwise objectionable" language and its requirement that all removals be done in "good faith."

4. Specify that "responsible, in whole or in part, for the creation or development of information" in the definition of "information content provider," 47 U.S.C. § 230(f)(3), includes editorial decisions that modify or alter content, including but not limited to substantively contributing to, commenting upon, editorializing about, or presenting with a discernible viewpoint content provided by another information content provider.

[15] Adrian Shahbaz & Allie Funk, "Freedom on the Net 2019 Key Finding: Governments harness big data for social media surveillance," Freedom House, Social Media Surveillance, https://freedomhouse.org/report/freedom-on-the-net/2019/the-crisis-of-social-media/social-media-surveillance ("Social media surveillance refers to the collection and processing of personal data pulled from digital communication platforms, often through automated technology that allows for real-time aggregation, organization, and analysis of large amounts of metadata and content . . . . Advances in artificial intelligence (AI) have opened up new possibilities for automated mass surveillance.").

5. Mandate disclosure for internet transparency similar to that required of other internet companies, such as broadband service providers.

III. The Commission Should Act to Protect Free Speech Online

New regulations guiding the interpretation of section 230 are necessary to facilitate the provisions' interpretation in a way that best captures one of the nation's most important Constitutional freedoms. "Free speech is the bedrock of American democracy . . . . The freedom to express and debate ideas is the foundation for all of our rights as a free people."[16] Our democracy has long recognized that control of public discourse in the hands of too few stifles freedom of expression and risks undermining our political institutions. For centuries, Americans have taken action to maintain the free flow of information and ideas to ensure the fullest and most robust marketplace of ideas—from the Postal Service Act of 1792, one of Congress's first acts which established preferential rates for newspapers,[17] to nondiscrimination requirements for telegraphs and telephones,[18] to antitrust actions to ensure the free flow of news stories,[19] and to efforts to limit undue dominance in broadcast and cable media to guarantee the flow of information to television viewers.[20]

Yet today, free speech faces new threats. Many Americans follow the news, stay in touch with friends and family, and share their views on current events through social media and other

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[16] E.O. 13925, Section 1.
[17] Richard B. Kielbowicz, News in the Mail: The Press, Post Office and Public Information, 1700-1860s, at 33-34 (1989).
[18] Thomas B. Nachbar, The Public Network, 17 CommLaw Conspectus 67, 77 (2008). ("Nondiscriminatory access is . . . the order of the day for . . . telecommunications, and even cable television.").
[19] Associated Press v. United States, 326 U.S. 1 (1945).
[20] Turner Broad. Sys, Inc. v. F.C.C., 512 U.S. 622 (1994); F.C.C. v. National Citizens Comm. for Broad., 436 U.S. 775 (1978); Nat'l Broad. Co. v. United States, 319 U.S. 190 (1943); Time Warner Ent. Co. L.P. v. F.C.C., 240 F.3d 1126 (D.C. Cir. 2001).

online platforms. These platforms function, as the Supreme Court recognized, as a 21st century equivalent of the public square.[21] Provision and control of the public square is a public trust. Because it entails selecting which speech gets heard and by whom, social media can assimilate a collective conversation into a corporate voice with a corporate point of view. As the E.O. explains, "[w]hen large, powerful social media companies censor opinions with which they disagree, they exercise a dangerous power. They cease functioning as passive bulletin boards, and ought to be viewed and treated as content creators."[22] The Commission itself has previously recognized the importance of enabling "the widest possible dissemination of information from diverse and antagonistic sources" and "assuring that the public has access to a multiplicity of information sources" as internet regulations' essential goal.[23]

Unfortunately, large online platforms appear to engage in selective censorship that is harming our national discourse. The E.O. notes that "[t]ens of thousands of Americans have reported online platforms "flagging" content as inappropriate, even though it does not violate any stated terms of service" and is not unlawful. The platforms "mak[e] unannounced and unexplained changes to company policies that have the effect of disfavoring certain viewpoints and delet[e] content and entire accounts with no warning, no rationale, and no recourse."[24] FCC

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[21] Packingham v. North Carolina, 137 S. Ct. 1730, 1732 (2017) ("Social media . . . are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge.").
[22] E.O. 13925, Section 1.
[23] Federal Communications Commission, In the Matter of Protecting and Promoting the Open Internet, GN Docket No. 14-28, FCC 15-24, Report and Order on Remand, Declaratory Ruling, and Order, 2015 WL 1120110, *268 (¶ 545) (quoting Turner, 512 U.S. at 663).
[24] E.O. 13925, Section 1; Divino Group LLC, et al. v. Google LLC, et al., 5:19-cv-4749-VKD, Dkt #20 (2d Am. Compl.) at ¶¶ 119-123, 128-247 (N.D. Cal. (San Jose Division), dated Aug. 13, 2019) (class action complaint alleging YouTube censorship of LGBT+ content).

Commissioner Brendan Carr has remarked, "there's no question that [large social media platforms] are engaging in editorial conduct, that these are not neutral platforms."[25] Others have expressed shock that while large social media platforms will censor or fact-check constitutionally elected democratic leaders, many social media companies welcome and facilitate censorship by the Chinese Communist Party, thereby spreading disinformation and communist propaganda related to China's mass imprisonment of religious minorities, the origins of the COVID-19 pandemic, and the pro-democracy protests in Hong Kong.[26] Unfortunately, few academic empirical studies exist of the phenomenon of social media bias.

Much of social media's overarching influence and power stems from the immunities it enjoys under expansive interpretations of section 230 of the Communications Decency Act,[27] a provision Congress passed in 1996 at the beginning of the internet era. Many early cases, understandably protective of a nascent industry, read section 230's protections expansively. But, given the maturing internet economy and emergence of dominant social media platforms, the FCC should re-examine section 230, as well as other provisions of the Communications Act of 1934. The FCC should determine how section 230 can best serve its goals of promoting internet

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[25] Jan Jekielek, On Social Media Bias, Trump's Executive Order, and the China Data Threat: FCC Commissioner Brendan Carr, The Epoch Times, June 1, 2020, https://www.theepochtimes.com/on-social-media-bias-trumps-executive-order-and-the-china-data-threat-fcc-commissioner-brendan-carr_3372161.html.

[26] See, e.g., Sigal Samuel, China paid Facebook and Twitter to help spread anti-Muslim propaganda, Vox, Aug. 22, 2019, https://www.vox.com/future-perfect/2019/8/22/20826971/facebook-twitter-china-misinformation-ughiur-muslim-internment-camps; Ryan Gallagher, China's Disinformation Effort Targets Virus, Researcher Says, Bloomberg News, May 12, 2020, https://www.bloomberg.com/news/articles/2020-05-12/china-s-disinformation-campaign-targets-virus-and-businessman; James Titcomb & Laurence Dodds, Chinese state media use Facebook adverts to champion Hong Kong crackdown, June 8, 2020, https://www.telegraph.co.uk/technology/2020/06/08/chinese-state-media-use-facebook-adverts-champion-hong-kong/.

[27] 47 U.S.C. § 230.

diversity and a free flow of ideas, as well as holding dominant platforms accountable for their editorial decisions, in new market conditions and technologies that have emerged since the 1990s.[28]

IV. Relevant Facts and Data: Technological and Market Changes

Contemporary social media platforms have vastly different offerings, business models, relationships to users and customers, and, indeed, roles in national life than the early online bulletin boards that Prodigy and AOL offered in 1996. The FCC should recognize that the liability protections appropriate to internet firms in 1996 are different because modern firms have much greater economic power, play a bigger, if not dominant, role in American political and social discourse, and, with machine learning and other artificial techniques, have and exercise much greater power to control and monitor content and users.

CompuServe, Prodigy, America Online, and their competitors had fundamentally different business models from modern social media companies.[29] They had proprietary server banks, and their business model was to charge consumers for access, with significant surcharges

[28] See, e.g., Cubby, Inc. v. CompuServe Inc., 776 F.Supp. 135 (S.D.N.Y. 1991) (addressing CompuServe's 1990 service providing various online subscriber forums for certain groups).
[29] Andrew Pollack, Ruling May Not Aid Videotex, N.Y. Times, Sept. 15, 1987, at D1, https://www.nytimes.com/1987/09/15/business/ruling-may-not-aid-videotex.html (last visited July 27, 2020) ("The Videotex Industry Association estimates that there are 40 consumer-oriented services, such as CompuServe and the Source, in the United States, with a total membership of 750,000.").

for use of social features.[30] They were not interoperable,[31] There was thus no online "general public" population about whom information could be known, nor were there business partners to whom information on members of the public could be aggregated and sold. Online services faced a competitive landscape.

Online services competed with one another by commissioning or developing their own games, chat systems, financial-markets reporting, news services, and in-network mail services.[32] As users paid to connect, and thus directly funded online services, most online services did not contain advertising. The online service business model was not significantly reliant on third-party content because access to proprietary content was at the heart of online services' marketing

[30] Id. ("It is unclear, for instance, to what extent the gateway will be able to tell consumers where to go for the information they desire . . . . Each information service has its own commands for information retrieval."); Michael J. Himowitz, A look at on-line services CompuServe and Prodigy, The Baltimore Sun, Jan. 17, 1994 ("CompuServe [costs] $8.95 per month . . . . Effective Feb. 6, rates for forums and extended services . . . are an additional $4.80 per hour at 1200 or 2400 Baud, $9.60 per hour at 9600 or 14,400 Baud . . . . Prodigy: Most popular plan charges $14.95 per month . . . Additional Plus hours [for use of bulletin boards and stock market prices] are $3.60 each.").

[31] Pollack, supra note 29 ("Each information service has its own commands for information retrieval. With a useful gateway [which did not yet exist], the user would need to know only one set of commands and the gateway would translate them."); David Bernstein, Interoperability: The Key to Cloud Applications, https://e.huawei.com/en/publications/global/ict_insights/hw_376150/feature%20story/HW_376286 (last visited July 19, 2020) ("[T]he original online services such as AOL, Prodigy, and CompuServe had no interoperability between them. Content posted on one service could not be consumed by a client connected to a different service. Email could not be sent from a user on one service to a user on another.").

[32] Joanna Pearlstein, MacWorld's Guide to Online Services, MacWorld, Aug. 1994, at 90 ("Core services include general, business, and sports news; computer forums and news; reference materials; electronic mail and bulletin boards; business statistics and data; games; shopping services; travel services; and educational reference material. Still, the different online services do have different emphases, so even though they all offer a range of basic services, they are not interchangeable.").

efforts.[33] The online services of the late 1990s ran online bulletin boards as a minor sideline and used volunteer moderators from the computer hobbyist community.[34] Their business model was based on fees for connection time and professional database access, not community content.

One result of this model was that monitoring users and their content was a burden and regulatory imposition. Zeran, a leading and widely cited case on moderation, reflects this understanding of the technology of that time.[35] The Zeran court took the view, which most section 230 cases accept, that "liability [for third-party posts] upon notice [by an offended

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[33] James Coats, Getting on-line with cyberspace heavyweights, Chicago Tribune, Feb. 28, 1993 at C8 ("GEnie's greatest value to me is that it serves as a gateway to the ultraexpensive Dow Jones News/Retrieval service. Typing DOWJONES on GEnie gets me access to hundreds of thousands of newspaper articles - but at a cost well above $2 a minute. Still, when I'm involved in personal research, it empowers me with access to more than 100 different newspapers, wire services and magazines . . . . A costly service [on CompuServe] called IQUEST, for example, gets you access to thousands of newspapers, magazines, books and other research materials. A magazine database lets you search hundreds of thousands of back issues of publications from Playboy to Foreign Policy. The catch is that each article you decide to read in full costs $1.50 . . . . Tremendous amounts of information about stocks and investing can be had as well, for a price. You can follow favorite stocks by BasicQuotes and seek out news by company. Much of the famous Standard and Poor's research data can be had on CompuServe's S&P Online. Most company filings with the Securities and Exchange Commission can be downloaded on a service called Disclosure. I make heavy use of CompuServe's Executive News Service, which gives me an electronic 'clipping service' providing each day's news about dozens of firms I follow for my job, as well as other topics . . . . But Delphi takes the Internet much further than the other boards, which confine Internet traffic to electronic mail. With Delphi you can actually hook your home computer up with mainframes and minicomputers all around the world and read and download an almost unimaginably diverse wealth of files.").

[34] Catherine Buni & Soraya Chemaly, The Secret Rules of the Internet: the murky history of moderation, and how it's shaping the future of free speech, The Verge (April 13, 2016), https://www.theverge.com/2016/4/13/11387934/internet-moderator-history-youtube-facebook-reddit-censorship-free-speech (last visited July 19, 2020) ("Moderation's initially haphazard, laissez-faire culture has its roots here. Before companies understood how a lack of moderation could impede growth and degrade brands and community, moderators were volunteers; unpaid and virtually invisible. At AOL, moderation was managed by a Community Leader program composed of users who had previously moderated chat rooms and reported 'offensive' content. They were tasked with building 'communities' in exchange for having their subscription fees waived. By 2000, companies had begun to take a more proactive approach.").

[35] Zeran v. Am. Online, Inc., 129 F.3d 327 (4th Cir. 1997).

viewer] reinforces service providers' incentives to restrict speech and abstain from self-regulation."[36] The court went on to explain that online services cannot possibly take responsibility for third-party content due to its volume; as such, online services will simply prohibit all such content unless they are protected from liability for it. In the court's words:

> "If computer service providers were subject to distributor liability, they would face potential liability each time they receive notice of a potentially defamatory statement—from any party, concerning any message. Each notification would require a careful yet rapid investigation of the circumstances surrounding the posted information, a legal judgment concerning the information's defamatory character, and an on-the-spot editorial decision whether to risk liability by allowing the continued publication of that information. Although this might be feasible for the traditional print publisher, the sheer number of postings on interactive computer services would create an impossible burden in the Internet context."[37]

However, today's social media companies have adopted a different business model. Rather than provide database access, like Prodigy did, social media offers primarily third-party content.[38] Rather than charge fees, social media platforms profile users in order to categorize

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[36] Id. at 333.
[37] Id.
[38] Facebook Investor Relations, https://investor.fb.com/resources/default.aspx (last visited July 19, 2020) ("Founded in 2004, Facebook's mission is to give people the power to build community and bring the world closer together. People use Facebook to stay connected with friends and family, to discover what's going on in the world, and to share and express what matters to them."); Twitter Investor Relations, https://investor.twitterinc.com/contact/faq/default.aspx (last visited July 19, 2020) ("What is Twitter's mission statement? The mission we serve as Twitter, Inc. is to give everyone the power to create and share ideas and information instantly without barriers. Our business and revenue will always follow that mission in ways that improve – and do not detract from – a free and global conversation."); Google, Our Approach to Search, https://www.google.com/search/howsearchworks/mission/ (last visited July 19, 2020) ("Our company mission is to organize the world's information and make it universally accessible and useful."); YouTube Mission Statement, https://www.youtube.com/about/ (last visited July 19, 2020) ("Our mission is to give everyone a voice and show them the world. We believe that everyone deserves to have a voice, and that the world is a better place when we listen, share and build community through our stories."); Matt Buchanan, Instagram and the Impulse to Capture Every Moment, The New Yorker, June 20, 2013, https://www.newyorker.com/tech/annals-of-technology/instagram-and-the-impulse-to-capture-every-moment (last visited July 27, 2020)

them and connect them to advertisers and other parties interested in user information.[39] Online platforms like Twitter, Facebook, and YouTube have content moderation at the heart of their business models. Unlike the early internet platforms, they have invested immense resources into both professional manual moderation and automated content screening for promotion, demotion, monetization, and removal.[40]

("When I think about what Instagram is, I think about moments," said Kevin Systrom, the photo-sharing service's co-founder and C.E.O. "Our mission is to capture and share the world's moments.").

[39] Len Sherman, Why Facebook Will Never Change Its Business Model, Forbes.com, Apr, 16, 2018, https://www.forbes.com/sites/lensherman/2018/04/16/why-facebook-will-never-change-its-business-model/#7cdac11c64a7 (last visited July 27, 2020) ("By now, it's widely understood that Facebook's voracious appetite for user data is driven by their business model which charges advertisers for access to precisely targeted segments of their massive consumer database. No one knows more about more consumers than Facebook"); Twitter and Facebook have differing business models, The Economist, June 6, 2020, https://www.economist.com/business/2020/06/04/twitter-and-facebook-have-differing-business-models (last visited July 27, 2020) ("At first blush, Twitter and Facebook look similar. Each is a social network, connecting users online and presenting them with content in a 'feed', a never-ending list of posts, pictures and videos of pets. Each makes money by selling advertising, and thus has an interest in using every trick to attract users' attention. And each employs gobbets of data gleaned from users' behaviour to allow advertisers to hit targets precisely, for which they pay handsomely"); Enrique Dans, Google Vs. Facebook: Similar Business Models, But With Some Very Big Differences, Forbes.com, Feb. 2, 2019, https://www.forbes.com/sites/enriquedans/2019/02/02/google-vs-facebook-similar-business-models-but-with-some-very-big-differences/#6ab9408541ef (last visited July 27, 2020) ("Google does not sell my data or pass it on to any third party, it simply allows that third party to display an advertisement to a segment of its database that includes me, based on certain variables . . . . What is the result of Google knowing about us and our online interests? We receive ads that largely reflect those interests and we still have some control over what we see.").

[40] Zoe Thomas, Facebook content moderators paid to work from home, BBC.com, Mar. 18, 2020, https://www.bbc.com/news/technology-51954968 (last visited July 27, 2020) ("Facebook has approximately 15,000 content moderators in the US, who are hired by third-party contracting companies"); Elizabeth Dwoskin, et al., Content moderators at YouTube, Facebook and Twitter see the worst of the web — and suffer silently, Washington Post, July 25, 2019, https://www.washingtonpost.com/technology/2019/07/25/social-media-companies-are-outsourcing-their-dirty-work-philippines-generation-workers-is-paying-price/ (last visited July 27, 2020) ("In the last couple of years, social media companies have created tens of thousands of jobs around the world to vet and delete violent or offensive content . . . ."); Shannon Bond, Facebook, YouTube Warn Of More Mistakes As Machines Replace Moderators, National Public

Understanding how new entrants can or cannot participate in these intermediary markets is therefore key in understanding appropriate liability regimes; this is particularly important because liability shields can deter entrance. Market observers have significant concerns about barriers to entrance for new social media companies as well as social media's role with other edge providers in creating mediation markets. It is no secret that today's online platforms exist in highly concentrated markets.[41] Moreover, the relationship between social media and their adjacent markets is unclear, with mergers and other agreements having the potential for unexpected anticompetitive results.[42] Social media firms also demonstrate network effects and other barriers to entry, which frequently lead to weaker competition.[43] This lack of competition is particularly troubling given the decrease of new entrants documented in the broader economy.[44]

Section 230 was designed to assist the nascent internet industry. Pivotal judicial decisions, such as Zeran, interpreted ambiguous language in section 230 broadly, but at a time when different cost structures, business models, and markets prevailed. Given the rapidly

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Radio, March 31, 2020, https://www.npr.org/2020/03/31/820174744/facebook-youtube-warn-of-more-mistakes-as-machines-replace-moderators (last visited July 27, 2020) ("Facebook, YouTube and Twitter are relying more heavily on automated systems to flag content that violate their rules . . . . Tech companies have been saying for years that they want computers to take on more of the work of keeping misinformation, violence and other objectionable content off their platforms. Now the coronavirus outbreak is accelerating their use of algorithms rather than human reviewers.").

[41] Justin Haucap & Ulrich Heimeshoff, Google, Facebook, Amazon, eBay: Is the Internet driving competition or market monopolization? 11 Int. Econ. Policy 49–61 (2014).

[42] Carl Shapiro, Protecting Competition in the American Economy: Merger Control, Tech Titans, Labor Markets. 33(3) Journal of Economic Perspectives 69 (2019), available at http://faculty.haas.berkeley.edu/shapiro/protectingcompetition.pdf.

[43] Steven Berry, Martin Gaynor & Fiona Scott Morton, Do Increasing Markups Matter? Lessons from Empirical Industrial Organization, 33(3) Journal of Economic Perspectives 44 (2019).

[44] Germán Gutiérrez & Thomas Philippon, The Failure of Free Entry. NBER Working Paper No. 26001 (June 2019), available at https://www.nber.org/papers/w26001.pdf.

changing markets and relationship between market structure and optimal liability rules, NTIA urges the FCC to re-examine section 230 and work towards transparency in these markets.

V. The Authority and Need for Issuing Regulations for Section 230

This section sets forth the FCC's authority to issue regulations to interpret section 230 and shows how regulations are necessary to resolve the statute's ambiguities that the E.O. identified. This section further explains how the FCC has jurisdiction to issue regulations, outlines the background and history of section 230, explains its structure, and shows how courts have relied upon its ambiguities to make overly expansive interpretations.

Finally, it examines how the section's ambiguities should be resolved. Specifically, NTIA respectfully requests the FCC to:

- clarify the relationship between 230(c)(1) and (c)(2);
- explain the meaning of "good faith" and "otherwise objectionable" in section 230(c)(2);
- specify how the limitation on the meaning of "interactive computer service" found in section 230(f)(2) should be read into section 230(c)(1); and,
- explicate the meaning of "treated as a speaker or publisher" in section 230(c)(1).

A. The Commission's Power to Interpret Section 230 of the Communications Decency Act

Section 201(b) of the Communications Act (Act) empowers the Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out this chapter."[45] Under this authority, the FCC should promulgate rules to resolve ambiguities in Section 230. The Supreme Court has confirmed that "the grant in section 201(b) means what it

[45] 47 U.S.C. § 201(b).

says: The FCC has rulemaking authority to carry out the 'provisions of this Act.'" Section 230, in turn, was incorporated into the Act – in the same portion of the Act, Title II, as section 201(b) – by the Telecommunications Act of 1996 (1996 Act). The fact that section 230 was enacted after section 201(b) is of no consequence; the Supreme Court repeatedly has held that the Commission's section 201(b) rulemaking power extends to all subsequently enacted provisions of the Act, specifically identifying those added by the Telecommunications Act of 1996.[46] Thus, the Commission has authority under section 201(b) to initiate a rulemaking to implement section 230. That broad rulemaking authority includes the power to clarify the language of that provision, as requested in the petition.

The Commission has authority to implement section 230 through regulation even if this section was added to the 1934 Act through the amendments in the Telecommunications Act of 1996. It does not matter if the provision specifically mentions or contemplates FCC regulation. For instance, section 332(c)(7), which was also added to the Act by the 1996 Act, limits State and local decision-making on the placement, construction, or modification of certain wireless service facilities. The section makes no mention of FCC authority, only alluding to the Commission in passing and giving it no role in the provision's implementation. The Supreme Court nonetheless, upheld Commission's authority to issue regulations pursuant to section

[46] AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366, 378 (1999) ("We think that the grant in § 201(b) means what it says: The FCC has rulemaking authority to carry out the "provisions of this Act," which include §§ 251 and 252, added by the Telecommunications Act of 1996"); City of Arlington v. FCC, 668 F.3d 229, 250 (5th Cir. 2012), aff'd, 569 U.S. 290 (2013) ("Section 201(b) of that Act empowers the Federal Communications Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out [its] provisions. Of course, that rulemaking authority extends to the subsequently added portions of the Act.").

332(c)(7) for the simple reason that it was codified within the 1934 Act, and section 201(b) empowers the Commission to promulgate rules interpreting and implementing the entire Act.[47]

Similarly, in Iowa Utilities, the Supreme Court ruled that the FCC had rulemaking authority to implement sections 251 and 252 of the Act.[48] As with section 332, these sections did not explicitly grant the Commission power over all aspects of their implementation, arguably excluding intrastate and other areas. Nonetheless, the Court ruled that "§ 201(b) explicitly gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies."[49] These two decisions, and their underlying rationales, compel the same result for a Commission rulemaking to interpret section 230, and the rationale is simple and inarguable: if Congress chooses to codify a section into the 1934 Communications Act, then section 201(b) gives the FCC the power to clarify and implement it through regulation.

Neither section 230's text, nor any speck of legislative history, suggests any congressional intent to preclude the Commission's implementation. This silence further underscores the presumption that the Commission has power to issue regulations under section 230. As the Fifth Circuit noted with respect to section 332(c)(7), "surely Congress recognized that it was legislating against the background of the Communications Act's general grant of rulemaking authority to the FCC."[50] Accordingly, if Congress wished to exclude the Commission from the interpretation of section 230, "one would expect it to have done so explicitly." Congress did not do so and, as was the case for section 332(c)(7), that decision

[47] City of Arlington, 569 U.S. at 293 ("Of course, that rulemaking authority [of section 201(b)] extends to the subsequently added portions of the Act").
[48] Iowa Util. Bd., 525 U.S. at 378-87.
[49] Iowa Util. Bd., 525 U.S. at 380.
[50] Arlington, 668 F.3d at 250.

opens an ambiguity in section 230 that the Commission may fill pursuant to its section 201(b) rulemaking authority.

B. Background to Section 230

Section 230 reflects a congressional response to a New York state case, Stratton Oakmont, Inc. v. Prodigy Servs. Co., decided in 1995.[51] In Stratton Oakmont, a New York trial court reasoned that Prodigy had become a "publisher" under defamation law because it voluntarily deleted some messages from its message boards "on the basis of offensiveness and 'bad taste,'" and was liable for the acts of its agent, the "Board Leader" of the message board, who it had hired to monitor postings on its bulletin board. The court held that Prodigy, having undertaken an affirmative duty to remove content, therefore was legally responsible for failing to remove an allegedly defamatory posting.[52] The U.S. Court of Appeals for the Ninth Circuit explained that: "[t]he Stratton Oakmont court concluded that when a platform engages in content

[51] Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC, 521 F.3d 1157, 1163 (9th Cir. 2008) ("Section 230 was prompted by a state court case holding Prodigy responsible for a libelous message posted on one of its financial message boards"); Barnes v. Yahoo!, Inc., 570 F.3d 1096, 1101 (9th Cir. 2009) ("This is not surprising, because, as we and some of our sister circuits have recognized, Congress enacted the Amendment in part to respond to a New York state court decision, Stratton Oakmont, [citations omitted,] which held that an internet service provider could be liable for defamation."); Barrett v. Rosenthal, 40 Cal. 4th 33, 44, 146 P.3d 510, 516 (2006) ("The legislative history indicates that section 230 was enacted in response to an unreported New York trial court case."); Sen. Rep. No. 104-230, 2d. Session at 194 (1996) ("One of the specific purposes of [section 230] is to overrule Stratton Oakmont v. Prodigy and any other similar decisions"); see also H.R. Conf. Rep. No. 104-458, at 208 ("The conferees believe that [decisions like Stratton Oakmont] create serious obstacles to the important federal policy of empowering parents to determine the content of communications their children receive through interactive computer services"); 141 Congressional Record H8469–H8470 (daily ed., June 14, 1995) (statement of Rep. Cox, referring to disincentives created by the Stratton Oakmont decision); Blumenthal v. Drudge, 992 F. Supp. 44, 52 n.13 (D.D.C. 1998) ("the legislative history makes clear that one of the primary purposes of Section 230 was to overrule the Stratton Oakmont decision").

[52] Stratton Oakmont, 1995 WL 323720 at *4.

moderation, or 'some voluntary self-policing,' the platform becomes 'akin to a newspaper publisher, and thus responsible for messages on its bulletin board that defamed third parties.'"[53]

Stratton Oakmont applied established tort law, which makes "publishers" liable for defamatory material.[54] Traditionally, tort law defines "publication" as simply the "communication intentionally or by a negligent act to one other than the person defamed."[55] But because the publication element of a defamation claim can also be satisfied when someone unreasonably fails to remove a communication exhibited via means in his possession or control, the Stratton Oakmont court concluded that Prodigy's content moderation or "voluntary self-policing" of the bulletin board rendered Prodigy a publisher of a defamatory statement on its board. Therefore, Prodigy was liable as a publisher.[56]

Stratton Oakmont distinguishes an earlier case, Cubby, Inc. v. CompuServe, Inc.,[57] which ruled an internet bulletin board was not the publisher of material on its bulletin board. The key distinguishing factor was that in Cubby, CompuServe did not moderate postings. The court ruled that CompuServe was not a publisher, but rather what tort law terms a "distributor," i.e., one "who merely transmit[s] defamatory content, such as news dealers, video rental outlets,

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[53] Fair Hous. Council, 521 F.3d at 1163.
[54] Barnes, 570 F.3d at 1104, citing W. Page Keeton, et al., Prosser and Keeton on the Law of Torts § 113, at 799 (5th ed. 1984) ("[E]veryone who takes part in the publication, as in the case of the owner, editor, printer, vendor, or even carrier of a newspaper is charged with publication."); see also Cianci v. New Times Publ'g Co., 639 F.2d 54, 60–61 (2d Cir.1980) (noting the "black-letter rule that one who republishes a libel is subject to liability just as if he had published it originally").
[55] Restatement (Second) of Torts § 577.
[56] Stratton Oakmont, 1995 WL 323710 at *5 ("PRODIGY's conscious choice, to gain the benefits of editorial control, has opened it up to a greater liability than CompuServe and other computer networks that make no such choice."); Barnes, 570 F.3d at 1102 ("publication involves reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content"); see Rodney A. Smolla, Law of Defamation § 4:77 (2d ed., 1999).
[57] Cubby, 776 F.Supp. 135.

bookstores, libraries, and other distributors and vendors."[58] "Distributors" are subject to liability "if, but only if, they know or have reason to know of the content's defamatory character."[59] Thus, publishers had strict liability for materials they published, whereas distributors only had liability for publishing defamation with actual or constructive knowledge of its defamatory character.[60] The Stratton Oakmont court reasoned that, in Cubby, CompuServe "had no opportunity to review the contents of the publication at issue before it was uploaded into CompuServe's computer banks," and, therefore, CompuServe had no liability for defamatory posts on platforms that it owned and controlled as distributor.[61]

While following established common law tort rules, the Stratton Oakmont and Cubby cases presented internet platforms with a difficult choice: voluntarily moderate unlawful or obscene content and thereby become liable for all messages on their bulletin boards, or do nothing and allow unlawful and obscene content to cover their bulletin boards unfiltered. In litigation, Prodigy claimed that the "sheer volume" of message board postings it received—by our current standards a humble "60,000 a day"—made manually reviewing every message impossible. If forced to choose between taking responsibility for all messages and deleting no messages at all, it would take the latter course.[62] Thus, given the technological differences between an internet platform and a bookstore or library, the former's ability to aggregate a much greater volume of information, traditional liability rules became strained. Tort law risked dis-incentivizing platforms from editing or moderating any content for fear they would become liable for all third-party content.

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[58] Smolla § 4:92.
[59] Restatement (Second) of Torts § 581(1) (1977).
[60] Prosser, supra note 54, § 113 at 803.
[61] Stratton Oakmont, 1995 WL 323710 at *2-3.
[62] Stratton Oakmont, 1995 WL 323710 at *3.

Congress intended section 230 to address this difficult liability problem, but nothing in the law's history, purpose or text allows for the conclusion that internet platforms should avoid all responsibility for their own editing and content-moderating decisions. Indeed, section 230 was originally titled the "Online Family Empowerment" amendment to the Communications Decency Act, which was titled, "protection for private blocking and screening of offensive material."[63] Responding to pornography and obscene material on the web, Congress designed section 230 to encourage platforms to moderate specific types of content, mostly related to sexual material inappropriate to minors. Congress did not intend a vehicle to absolve internet and social media platforms—which, in the age of dial-up internet bulletin boards, such as Prodigy, did not exist—from all liability for their editorial decisions.

Representatives Christopher Cox and Ron Wyden floated the bill that became section 230 as an alternative to Senator J. James Exon's bill that criminalized the transmission of indecent material to minors.[64] In public comments, Representative Cox explained that the section 230 would reverse Stratton Oakmont and advance the regulatory goal of allowing families greater power to control online content.[65] The final statute reflected his stated policy: "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

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[63] Telecommunications Act of 1996, Pub. L. No. 104-104, title V, Sec. 509 (1996).
[64] Robert Cannon, The Legislative History of Senator Exon's Communications Decency Act: Regulating Barbarians on the Information Superhighway, 49 Fed. Comm. L.J. 51 (1996); Felix T. Wu, Collateral Censorship and the Limits of Intermediary Immunity, 87 Notre Dame L. Rev. 293, 316 (2011); 141 Cong. Rec. H8468-69 (daily ed. Aug. 4, 1995); Ashcroft v. Am. Civil Liberties Union, 535 U.S. 564, 564 (2002) ("[T]he Communications Decency Act reflected Congress's response to the proliferation of pornographic, violent and indecent content on the web Congress' first attempt to protect children from exposure to pornographic material on the Internet.").
[65] See 141 Cong. Rec. H8469-70 (daily ed. Aug. 4, 1995) (statement of Rep. Cox).

services."[66] The comments in the Congressional record from supporting congressmen and women—and it received strong bi-partisan support—reveal an understanding that the Online Family Empowerment amendment, now codified as section 230, as a non-regulatory approach to protecting children from pornography,[67] intended to provide incentives for "Good Samaritan" blocking and screening of offensive material.

C. Section 230(c)'s Structure

To further these goals, Congress drafted the "Good Samaritan" exception to publisher liability. Section 230(c)(1) has a specific focus: it prohibits "treating" "interactive computer services," i.e., internet platforms, such as Twitter or Facebook, as "publishers." But, this provision only concerns "information" provided by third parties, i.e., "another internet content provider"[68] and does not cover a platform's own content or editorial decisions.

The text of section 230(c)(1) states:

(c) Protection for "Good Samaritan" blocking and screening of offensive material:

(1) Treatment of publisher or speaker

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[66] 47 U.S.C. § 230(b)(3).

[67] See 141 Cong. Rec. H8470 (1995) (statement of Rep. White) ("I want to be sure we can protect [children] from the wrong influences on the Internet. But . . . the last person I want making that decision is the Federal Government. In my district right now there are people developing technology that will allow a parent to sit down and program the Internet to provide just the kind of materials that they want their child to see. That is where this responsibility should be, in the hands of the parent. That is why I was proud to cosponsor this bill that is what this bill does . . . ."); id., (statement of Rep. Lofgren) ("[The Senate approach] will not work. It is a misunderstanding of the technology. The private sector is out giving parents the tools that they have. I am so excited that there is more coming on. I very much endorse the Cox-Wyden amendment . . . .").

[68] 47 U.S.C. § 230(c)(1).

> No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

Section (c)(2) also has a specific focus: it eliminates liability for interactive computer services that act 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."[69]

Subsection (c)(2) governs the degree to which some of the platform's own content moderation decisions receive any legal protection, stating:

> "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 . . . ."

Here, Congress protects "any action . . . taken in good faith to restrict access to or availability of material." This means any social media platform's editorial judgment, moderation, content editing or deletion receives legal immunity, but the plain words of the provision indicate that this protection only covers decisions to restrict access to <u>certain types</u> of enumerated content. As discussed <u>infra</u>, these categories are quite limited and refer primarily to traditional areas of media regulation—also consistent with legislative history's concern that private regulation could create family-friendly internet spaces—and only actions within these categories taken in "good faith."

[69] 47 U.S.C. § 230(c)(2).

D. Expansive Court Rulings Tied to Early Platforms and Outdated Technology

Courts have recognized that "Congress enacted this provision for two basic policy reasons: to promote the free exchange of information and ideas over the Internet and to encourage voluntary monitoring for offensive or obscene material."[70] Congress intended sections 230(c)(1) and (c)(2) to protect platform openness and monitoring for certain specific issues. But, as discussed infra, ambiguous language in these statutes allowed some courts to broadly expand section 230's immunity from beyond its original purpose into a bar any legal action or claim that involves even tangentially "editorial judgment."[71] These subsequent protections established from "speaker or publisher" are overly broad and expansive, and often have absolutely nothing to do with the original harm section 230 was meant to remedy: relieving platforms of the burden of reading millions of messages to detect for defamation as Stratton Oakmont would require. Far and above initially intended viewer protection, courts have ruled section 230(c)(1) offers immunity from contracts,[72] consumer fraud,[73] revenge pornography,[74]

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[70] Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1122 (9th Cir. 2003).
[71] See, e.g., Sikhs for Justice "SFJ", Inc. v. Facebook, Inc., 144 F.Supp.3d 1088, 1094–1095 (N.D.Cal. 2015).
[72] Caraccioli v. Facebook, Inc., 167 F. Supp.3d 1056, 1064-66 (N.D. Cal. 2016) (dismissing breach of contract claim and Cal. Bus. & Prof. Code § 17200 unfair practices claim); Lancaster v. Alphabet Inc., No. 2016 WL 3648608, at *5 (N.D. Cal. July 8, 2016) (dismissing claim for breach of covenant of good faith and fair dealing); Jurin v. Google, Inc., 695 F. Supp. 2d 1117, 1122–23 (E.D. Cal. 2010) (dismissing claim for fraud); Fed. Agency of News LLC, et al. v. Facebook, Inc., 395 F. Supp. 3d 1295 (N.D. Cal. 2019) (dismissing discrimination claims under Title II and 42 U.S.C. § 1983); Obado v. Magedson, 43 Media L. Rep. 1737 (D.N.J. 2014) (dismissing claim for promissory estoppel), aff'd, 612 F. App'x 90 (3d Cir. 2015).
[73] See Gentry v. eBay, Inc., 121 Cal. Rptr. 2d 703 (Cal. Ct. App. 2002); Hinton v. Amazon, 72 F. Supp. 3d 685, 687 (S. D. Miss. 2014); Oberdorf v. Amazon, 295 F. Supp. 3d 496 (Mid. D. PA Dec. 21, 2017).
[74] Jones v. Dirty World Entertainment Holding LLC, 755 F.3d 398 (6th Cir. 2014); S.C. v. Dirty World LLC, 40 Media L. Rep. 2043 (W.D. Mo. 2012); Poole v. Tumblr, Inc., 404 F. Supp. 3d 637 (D. Conn. 2019).

anti-discrimination civil rights obligations,[75] and even assisting in terrorism.[76] By expanding protections beyond defamation, these courts extend to platforms a privilege to ignore laws that every other communications medium and business must follow and that are no more costly or difficult for internet platforms to follow than any other business.

The problem of overly expansive interpretations for section 230 is not merely hypothetical. Tens of thousands of Americans have reported, among other troubling behaviors, online platforms "flagging" content as inappropriate, even though it does not violate any stated terms of service; making unannounced and unexplained changes to company policies that have the effect of disfavoring certain viewpoints; and deleting content and entire accounts with no warning, no rationale, and no recourse. As FCC Commissioner Brendan Carr has observed, social media such as Twitter "punis[h] speakers based on whether it approves or disapproves of their politics."[77] One can hardly imagine a result more contrary to Congress's intent to preserve on the internet "a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity."[78]

Further, by making contract and consumer fraud claims concerning moderation unenforceable under section 230, courts seriously injure section 230's goal "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services."[79] Content moderation policies become, as FCC Commissioner Brendan

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[75] Sikhs for Justice "SFJ", Inc., 144 F. Supp.3d 1088, 1094-1095.
[76] Force, 934 F.3d at 57.
[77] Jon Brokin, Arstechnica, FCC Republican excitedly endorses Trump's crackdown on social media, May 29, 2020, https://arstechnica.com/tech-policy/2020/05/fcc-republican-excitedly-endorses-trumps-crackdown-on-social-media/.
[78] 47 U.S.C. § 230(a)(1).
[79] 47 U.S.C. § 230(b)(2).

Carr recently described Twitter's moderation policy, "free speech for me, but not for thee."[80] Further, if interactive computer services' contractual representations about their own services cannot be enforced, interactive computer services cannot distinguish themselves. Consumers will not believe, nor should they believe, representations about online services. Thus, no service can credibly claim to offer different services, further strengthening entry barriers and exacerbating competition concerns.

Much of this overly expansive reading of section 230 rests on a selective focus on certain language from Zeran, a case from the United States of Appeals for the Fourth Circuit.[81] The line of court decisions expanding section 230 in such extravagant ways relies on Zeran's reference to: "lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred."[82] This language arguably provides full and complete immunity to the platforms for their own publications, editorial decisions, content-moderating, and affixing of warning or fact-checking statements.[83] But, it is an erroneous interpretation, plucked from its surrounding context and thus removed from its more accurate meaning.

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[80] News Break, Brendan Carr Decries Twitter Censorship as 'Free Speech for Me, but Not for Thee, June 11, 2020, https://www.newsbreak.com/news/1582183608723/brendan-carr-decries-twitter-censorship-as-free-speech-for-me-but-not-for-thee.

[81] Zeran, 129 F.3d at 327.

[82] Zeran, 129 F.3d at 330.

[83] These lines from Zeran have led some courts to adopt the so-called three part section 230(c)(1) test: (1) whether Defendant is a provider of an interactive computer service; (2) if the postings at issue are information provided by another information content provider; and (3) whether Plaintiff's claims seek to treat Defendant as a publisher or speaker of third party content. Okeke v. Cars.com, 966 N.Y.S.2d 843, 846 (Civ. Ct. 2013), citing Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 564 F. Supp. 2d 544, 548 (E.D. Va. 2008), aff'd, 591 F.3d 250 (4th Cir. 2009). As the text explains, this so-called test errs in the third prong. The question is not whether the claim treats defendant as a publisher or speaker—after all, virtually every legal claim (contract, fraud, civil rights violations) would do so. The question is whether liability is

In fact, the quotation refers to third party's exercise of traditional editorial function—not those of the platforms. As the sentence in Zeran that is immediately prior shows, section 230 "creates a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service." In other words, the liability from which section 230(c)(1) protects platforms is that arising from the content that the third-party posts—i.e. the "information" posted by "another information provider" and those information providers' editorial judgments.

In light of the history of publisher and distributor liability law upon which section 230 draws, as well as its actual text, the best way to interpret the distinction between section 230(c)(1) and (c)(2) is as follows: Section 230(c)(1) applies to acts of omission—to a platform's failure to remove certain content. In contrast, section 230(c)(2) applies to acts of commission—a platform's decisions to remove. Section 230(c)(1) does not give complete immunity to all a platform's "editorial judgments."

E. Need for FCC Regulations: Ambiguities in Section 230

Section 230 contains a number of ambiguities that courts have interpreted broadly in ways that are harmful to American consumers, free speech, and the original objective of the statute. First, as discussed below, uncertainty about the interplay between section 230(c)(1) and (c)(2) has led many courts to a construction of the two provisions that other courts consider to be anomalous or lead to rendering section 230(c)(2) superfluous. Second, the interplay between section 230(c)(1) and (c)(2) does not make clear at what point a platform's moderation and presentation of content becomes so pervasive that it becomes an information content provider

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based on the content of third-party information. Requiring platforms to monitor the content of thousands of posts was the impetus behind section 230.

and, therefore, outside of section 230(c)(1)'s protections. Third, critical phrases in section 230(c)(2)— the "otherwise objectionable" material that interactive computer service providers may block without civil liability; and the "good faith" precondition for activating that immunity—are ambiguous on their face. And, with respect to the former, courts have posited starkly divergent interpretations that can only create uncertainty for consumers and market participants. Finally, what it means to be an "information content provider" or to be "treated as a publisher or speaker" is not clear in light of today's new technology and business practices. The Commission's expertise makes it well equipped to address and remedy section 230's ambiguities and provider greater clarity for courts, platforms, and users.

1. The Interaction Between Subparagraphs (c)(1) and (c)(2)

Ambiguity in the relationship between subparagraphs (c)(1) and (c)(2) has resulted in courts reading section 230(c)(1) in an expansive way that risks rendering (c)(2) a nullity. Numerous district court cases have held that section 230(c)(1) applies to removals of content, not section 230(b)(2) with its exacting "good faith" standard."[84] For instance, in Domen v. Vimeo, a federal district court upheld the removal of videos posted by a religious groups' questioning a California law's prohibition on so-called sexual orientation change efforts (SOCE), and the law's effect on pastoral counseling. Finding the videos were "harassing," the court upheld their removal under both section 230(c)(1) and section (c)(2), ruling that these sections are co-extensive, rather than aimed at very different issues.[85] In doing so, the court rendered section

[84] Domen v. Vimeo, Inc., 433 F. Supp. 3d 592, 601 (S.D.N.Y. 2020); Lancaster v. Alphabet, Inc., 2016 WL 3648608 (N.D. Cal. July 28, 2016); Sikhs for Justice "SFJ", Inc., 144 F.Supp.3d 1088.
[85] Domen, 433 F. Supp. 3d at 601 ("the Court finds that Vimeo is entitled to immunity under either (c)(1) or (c)(2)").

230(c)(2) superfluous—reading its regulation of content removal as completely covered by section 230(c)(1)'s regulation of liability for user-generated third party content.

The Commission should promulgate a regulation to clarify the relationship between the two provisions so that section 230(c)(1) does not render section 230(c)(1) superfluous. To determine how these subparagraphs interact—or as E.O. 13925 specifically instructs: "to clarify and determine the circumstances under which a provider of an interactive computer service that restricts access to content in a manner not specifically protected by subparagraph (c)(2)(A) may also not be able to claim protection under subparagraph (c)(1),"[86] the FCC should determine whether the two subsections' scope is additive or not. While some courts have read section 230(c)(1) "broadly,"[87] few have provided any principled distinction between the two subsections.

NTIA urges the FCC to follow the canon against surplusage in any proposed rule.[88] Explaining this canon, the Supreme Court holds, "[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . . ."[89] The Court emphasizes that the canon "is strongest when an interpretation would render superfluous another part of the same statutory scheme."[90]

While some district courts, such as Domen discussed above, have ruled that section 230(c)(1) applies to content removal, which is section 230(c)(2)'s proper domain, those courts that have explicitly inquired into the proper relationship between the two subparagraphs have

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[86] E.O. 13925 § 2(b)(i).
[87] See Force, 934 F.3d at 64.
[88] Marx v. General Revenue Corp., 568 U.S. 371, 385 (2013).
[89] Corley v. United States, 556 U.S. 303, 314 (2009), quoting Hibbs v. Winn, 542 U.S. 88, 101 (2004).
[90] Marx, 568 U.S. at 386; see also Fair Hous. Council, 521 F.3d 1157 at 1167-68 (avoiding superfluity in interpret the "developer" exception in Section 230(f)(3) of the CDA).

followed the surplusage canon—ruling that the provisions cover separate issues[91] and "address different concerns."[92] "Section 230(c)(1) is concerned with liability arising from information provided online," while "[s]ection 230(c)(2) is directed at actions taken by Internet service providers or users to restrict access to online information."[93] Thus, "[s]ection 230(c)(1) provides immunity from claims by those offended by an online publication, while section 230(c)(2) protects against claims by those who might object to the restriction of access to an online publication."[94] Courts have refused to "interpret[] the CDA . . . [to allow] the general immunity in (c)(1) [to] swallow[] the more specific immunity in (c)(2)" because subsection (c)(2) immunizes only an interactive computer service's "actions taken in good faith."[95]

NTIA suggests that the FCC can clarify this relationship between section 230(c)(1) and section 230(c)(2) by establishing the following points. First, the FCC should make clear that section 230(c)(1) applies to liability directly stemming from the information provided by third-party users. Section 230(c)(1) does not immunize a platforms' own speech, its own editorial decisions or comments, or its decisions to restrict access to content or its bar user from a platform. Second, section 230(c)(2) covers decisions to restrict content or remove users.

NTIA, therefore, requests that the Federal Communications Commission add the below Subpart E to 47 CFR Chapter I:

> **Subpart E. Interpreting Subsection 230(c)(1) and Its Interaction With Subsection 230(c)(2).**
> § 130.01

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[91] See, e.g., Zango, 568 F.3d at 1175 (holding that (c)(2) is a "different . . . statutory provision with a different aim" than (c)(1)).
[92] Barrett, 40 Cal. 4th 33.
[93] Id. at 49 (emphasis added).
[94] Id. (emphasis added).
[95] e-ventures Worldwide, LLC v. Google, Inc., (M.D. Fla. Feb. 8, 2017) 2017 U.S. Dist. LEXIS 88650, at *9.

As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

(a) 47 U.S.C. 230(c)(1) applies to an interactive computer service for claims arising from failure to remove information provided by another information content provider. Section 230(c)(1) has no application to any interactive computer service's decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service. Any applicable immunity for matters described in the immediately preceding sentence shall be provided solely by 47 U.S.C. § 230(c)(2).

(b) An interactive computer service is not a publisher or speaker of information provided by another information content provider solely on account of actions voluntarily taken in good faith to restrict access to or availability of specific material in accordance with subsection (c)(2)(A) or consistent with its terms of service or use.

2. The Meaning of Section 230(c)(2)

Section 230(c)(2)'s ambiguities include (1) how to interpret "otherwise objectionable" and (2) "good faith."

a. "Otherwise objectionable"

If "otherwise objectionable" means any material that any platform "considers" objectionable, then section 230(b)(2) offers de facto immunity to all decisions to censor content. And some district courts have so construed section 230(c)(2).[96] But, many courts recognize

[96] Domen v. Vimeo, Inc., 2020 U.S. Dist. L 7935 (S.D.N.Y. Jan. 15, 2020), appeal filed No 20-616 (Feb. 18, 2020) ("Section 230(c)(2) is focused upon the provider's subjective intent of what is 'obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable.' That section 'does not require that the material actually be objectionable; rather, it affords protection for blocking material "that the provider or user considers to be' objectionable."'); Langdon v. Google, Inc., 474 F. Supp. 2d 622, 631 (D. Del. 2007) ("Plaintiff argues there was no refusal to run his ads on the basis they were obscene or harassing, and that Defendants cannot create 'purported reasons for not running his ads.' He omits, however, reference to that portion of § 230 which provides immunity from suit for restricting material that is 'otherwise objectionable.'").

limiting principles. Many look to the statutory canon of ejusdem generis, which holds that catch-all phases at the end of a statutory lists should be construed in light of the other phrases.[97] In this light, section 230(c)(2) only applies to obscene, violent, or other disturbing matters.[98]

Understanding how the section 230(c)(2) litany of terms has proved difficult for courts in determining how spam filtering and filtering for various types of malware fits into the statutory framework. Most courts have ruled that "restrict[ing] access" to spam falls within the section

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[97] Washington State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler, 537 U.S. 371, 372 (2003) ("under the established interpretative canons of noscitur a sociis and ejusdem generis, where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar to those enumerated by the specific words").

[98] Darnaa, LLC v. Google, Inc., 2016 WL 6540452 at *8 (N.D. Cal. 2016) ("The context of § 230(c)(2) appears to limit the term to that which the provider or user considers sexually offensive, violent, or harassing in content."); Song Fi, Inc. v. Google, Inc., 108 F. Supp. 3d 876, 883 (N.D. Cal. 2015) ("First, when a statute provides a list of examples followed by a catchall term (or 'residual clause') like 'otherwise objectionable,' the preceding list provides a clue as to what the drafters intended the catchall provision to mean," citing Circuit City Stores v. Adams, 532 U.S. 105, 115 (2001)). This is the rationale for the canon of construction known as eiusdem generis (often misspelled ejusdem generis), which is Latin for 'of the same kind); National Numismatic v. eBay, 2008 U.S. Dist. LEXIS 109793, at *25 (M.D. Fla. Jul. 8, 2008) ("Section 230 is captioned 'Protection for 'Good Samaritan' blocking and screening of offensive material,' yet another indication that Congress was focused on potentially offensive materials, not simply any materials undesirable to a content provider or user"); Sherman v. Yahoo! Inc., 997 F. Supp. 2d 1129 (S.D. Cal. 2014) (text messages allegedly violate Telephone Consumer Protection Act; Yahoo! raised section 230(c)(2)(B) as a defense) ("The Court declines to broadly interpret 'otherwise objectionable' material to include any or all information or content. The Ninth Circuit has expressed caution at adopting an expansive interpretation of this provision where providers of blocking software 'might abuse th[e CDA] immunity to block content for anticompetitive purposes or merely at its malicious whim, under the cover of considering such material "otherwise objectionable" under § 230(c)(2)."); Goddard v. Google, Inc., 2008 U.S. Dist. LEXIS 101890 (N.D. Cal. Dec. 17, 2008) ('[i]t is difficult to accept . . . that Congress intended the general term "objectionable" to encompass an auction of potentially-counterfeit coins when the word is preceded by seven other words that describe pornography, graphic violence, obscenity, and harassment.' In the instant case, the relevant portions of Google's Content Policy require that MSSPs provide pricing and cancellation information regarding their services. These requirements relate to business norms of fair play and transparency and are beyond the scope of § 230(c)(2).").

230(c)(2) framework, although that is difficult perhaps to see as a textual matter.[99] Spam, though irritating and destructive of the online experience, does not fit clearly into the litany in section 230, at least as courts have understood this litany.

The spam cases have prompted courts to examine the thread that runs through the list in section 230. A recent Ninth Circuit case perceptively sees the challenge: On one hand, "decisions recognizing limitations in the scope of immunity [are] persuasive,"[100] and "interpreting the statute to give providers unbridled discretion to block online content would . . . enable and potentially motivate internet-service providers to act for their own, and not the public, benefit."[101] In addition, the court did recognize that "the specific categories listed in § 230(c)(2) vary greatly: [m]aterial that is lewd or lascivious is not necessarily similar to material that is violent, or material that is harassing. If the enumerated categories are not similar, they provide little or no assistance in interpreting the more general category. We have previously recognized this concept."[102]

Yet, in fact, the original purpose of the Communications Decency Act—"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

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[99] Asurvio LP v. Malwarebytes Inc., 2020 U.S. Dist. LEXIS 53906 (N.D. Cal. Mar. 26, 2020) (allegation that M is wrongfully classifying A's software as malware); 4PC Drivers Headquarters, LP v. Malwarebytes Inc., 371 F. Supp. 3d 652 (N.D. Cal. 2019) (malware); Shulman v. FACEBOOK.com, 2018 U.S. Dist. LEXIS 113076 (D.D.C. Jul. 9, 2018) (spam); Holomaxx Technologies v. Microsoft Corp., 783 F. Supp. 2d 1097 (N.D. Cal. 2011) (spam); Smith v. Trusted Universal Stds. in Elec. Transactions, Inc., 2010 U.S. Dist. LEXIS 43360 (D. N.J. May 4, 2010) (deletion of spam); e360insight v. Comcast Corp., 546 F. Supp. 2d 605 (N.D. Ill. 2008) (spam); Zango v. Kapersky Lab., 568 F.3d 1169 (9th Cir. 2009) (competitive blocking software).

[100] Enigma Software Grp. USA, v. Malwarebytes, Inc., 946 F.3d 1040, 1050 (9th Cir. 2019).

[101] Id.

[102] Id. at 1051.

material"[103]—suggests that the thread that combines section 230(c)(2)'s concepts are those materials that were objectionable in 1996 and for which there was already regulation—regulation which Congress intended section 230 to provide incentives for free markets to emulate.

The first four adjectives in subsection (c)(2), "obscene, lewd, lascivious, filthy," are found in the Comstock Act as amended in 1909.[104] The Comstock Act prohibited the mailing of "every obscene, lewd, or lascivious, and every filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character."[105] In addition, the CDA used the terms "obscene or indecent," prohibiting the transmission of "obscene or indecent message."[106] The Act's second provision declared unconstitutional in Reno v. ACLU, section 223(d), prohibits the knowing sending or displaying of "any comment, request, suggestion, proposal, image, or other communication that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs, regardless of whether the user of such service placed the call or initiated the communication."[107] This language of "patently offensive . . ." derives from the definition of indecent speech set forth in the Pacifica decision and which the FCC continues to regulate to this day.[108]

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[103] 47 U.S.C. § 230(a)(4).

[104] Section 3893 of the Revised Statutes made by section 211 of the Criminal Code, Act of March 4, 1909, c. 321, 35 Stat. 1088, 1129; United States v. Limehouse, 285 U.S. 424, 425 (1932) (stating that "Section 211 of the Criminal Code (18 USCA § 334) declares unmailable 'every obscene, lewd, or lascivious, and every filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character") (additional citation added). The phrase is repeated in numerous state statutes.

[105] Id. at 424-6.

[106] 47 U.S. § 223(a) (May 1996 Supp.).

[107] 521 U.S. 844 (1997).

[108] FCC v. Pacifica Found., 438 U.S. 726, 732 (1978) ("patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs").

The next two terms in the list "excessively violent" and "harassing" also refer to typical concerns of communications regulation which were, in fact, stated concerns of the CDA itself. Congress and the FCC have long been concerned about the effect of violent television shows, particularly upon children; indeed, concern about violence in media was an impetus of the passage of the Telecommunications Act of 1996, of which the CDA is a part. Section 551 of the Act, entitled Parental Choice in Television Programming, requires televisions over a certain size to contain a device, later known at the V-chip. This device allows viewers to block programming according to an established rating system.[109] The legislation led to ratings for broadcast television that consisted of violent programming.[110] The FCC then used this authority to require televisions to allow blocking technology.[111]

And, of course, Congress and the FCC have long regulated harassing wire communications. Section 223, Title 47, the provision which the CDA amended and into which the CDA was in part codified, is a statute that prohibits the making of "obscene or harassing"

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[109] 47 U.S.C. § 303(x). See Technology Requirements to Enable Blocking of Video Programming Based on Program Ratings, 63 Fed. Reg. 20, 131 (Apr. 23, 1998) ("[T]he Commission is amending the rules to require . . . technological features to allow parents to block the display of violent , sexual, or other programming they believe is harmful to their children. These features are commonly referred to as 'v-chip' technology."). Finding that "[t]here is a compelling governmental interest in empowering parents to limit the negative influences of video programming that is harmful to children," Congress sought to "provid[e] parents with timely information about the nature of upcoming video programming and with the technological tools" to block undesirable programming by passing the Telecommunications Act of 1996 (the "Telecommunications Act").

[110] FCC News, Commission Finds Industry Video Programming Rating System Acceptable, Report No. GN 98-3 (Mar. 12, 1998), available at https://transition.fcc.gov/Bureaus/Cable/News_Releases/1998/nrcb8003.html.

[111] Amy Fitzgerald Ryan, Don't Touch That V-Chip: A Constitutional Defense of the Television Program Rating Provisions of the Telecommunications Act of 1996, 87 Geo. L.J. 823, 825 (1999), citing Lawrie Mifflin, TV Networks Plan Ratings System, Orange County Reg., Feb. 15, 1996, at A1.

telecommunications.[112] These harassing calls include "mak[ing] or caus[ing] the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number" or "mak[ing] repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication."[113] Roughly half of the States also outlaw "harassing" wire communications via telephone.[114] Congress enacted the Telephone Consumer Protection Act (TCPA), recently upheld in most part by the Supreme Court,[115] to ban "automated or prerecorded telephone calls, regardless of the content or the initiator of the message," that are considered "to be a nuisance and an invasion of privacy."[116]

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[112] 47 U.S.C. § 223.

[113] 47 U.S.C. § 223(a)(1)(D) & (E) (2012).

[114] See, e.g., (Arizona) Ariz. Rev. Stat. § 13-2916 ("It is unlawful for any person, with intent to terrify, intimidate, threaten or harass a specific person or persons, to do any of the following: 3. Otherwise disturb by repeated anonymous, unwanted or unsolicited electronic communications the peace, quiet or right of privacy of the person at the place where the communications were received."); (California) Cal. Pen. Code § 653m(b) ("Every person who, with intent to annoy or harass, makes repeated telephone calls or makes repeated contact by means of an electronic communication device, or makes any combination of calls or contact, to another person is, whether or not conversation ensues from making the telephone call or contact by means of an electronic communication device, guilty of a misdemeanor. Nothing in this subdivision shall apply to telephone calls or electronic contacts made in good faith or during the ordinary course and scope of business."); (Maryland) Md. Code Ann., Crim. Law § 3-804 ("A person may not use telephone facilities or equipment to make: (1) an anonymous call that is reasonably expected to annoy, abuse, torment, harass, or embarrass another; (2) repeated calls with the intent to annoy, abuse, torment, harass, or embarrass another"); (Oklahoma) 21 Okl. St. § 1172 ("It shall be unlawful for a person who, by means of a telecommunication or other electronic communication device, willfully either: 6. In conspiracy or concerted action with other persons, makes repeated calls or electronic communications or simultaneous calls or electronic communications solely to harass any person at the called number(s)").

[115] Barr v. Am. Ass'n of Political Consultants, 140 S. Ct. 2335 (2020) (upholding the Act except for its debt-collection exception).

[116] Telephone Consumer Protection Act of 1991, 105 Stat. 2394, 2395, codified at 15 U.S.C. § 6101.

Thus, the cases that struggled over how to fit spam into the list of section 230(c)(2) could simply have analogized spam as similar to harassing or nuisance phone calls.

The regulatory meanings, as understood in 1996 and used in the Communications Decency Act, itself, constitute the thread that unites the meanings of "obscene, lewd, lascivious, filthy, excessively violent, and harassing." All deal with issues involving media and communications content regulation intended to create safe, family environments. Compelling that conclusion is "the presumption of consistent usage—the rule of thumb that a term generally means the same thing each time it is used . . . [particularly for] terms appearing in the same enactment."[117] To ensure clear and consistent interpretations of the terms used in subsection 230(c)(2), NTIA requests, therefore, that the FCC add the below Subpart E to 47 CFR Chapter I:

> **Subpart E. Clarifying Subsection 230(c)(2).**
> § 130.02
> As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:
>
> **(a) "obscene," "lewd," "lascivious," and "filthy"**
> The terms "obscene," "lewd," "lascivious," and "filthy" mean material that:
> i. taken as a whole, appeals to the prurient interest in sex or portrays sexual conduct in a patently offensive way, and which, taken as a whole, does not have serious literary, artistic, political, or scientific value;
> ii. depicts or describes sexual or excretory organs or activities in terms patently offensive as measured by contemporary community standards; to the average person, applying contemporary community standards; or
> iii. signifies the form of immorality which has relation to sexual impurity, and have the same meaning as is given them at common law in prosecutions for obscene libel.
>
> **(b) "excessively violent"**
> The term "excessively violent" means material that:
> i. is likely to be deemed violent and for mature audiences according the Federal Communications Commission's V-chip regulatory regime and TV Parental Guidance, promulgated pursuant to Section 551 of the 1996

[117] United States v. Castleman, 572 U.S. 157, 174 (2014), citing IBP, Inc. v. Alvarez, 546 U.S. 21, 33–34 (2005) (Scalia, J., conc.).

Telecommunications Act, Pub. L. No. 104-104, § 551, 110 Stat. 139-42 (codified at 47 U.S.C. § 303; § 330(c)(4)); or

ii. constitutes or intends to advocate domestic terrorism or international terrorism, each as defined in 18 U.S.C. § 2331 ("terrorism").

(c) "harassing"

The term "harassing" means any material that:

i. that sent by an information content provider that has the subjective intent to abuse, threaten, or harass any specific person and is lacking in any serious literary, artistic, political, or scientific value;

ii. regulated by the CAN-SPAM Act of 2003, 117 Stat. 2699; or

iii. that is malicious computer code intended (whether or not by the immediate disseminator) to damage or interfere with the operation of a computer.

(d) "otherwise objectionable"

The term "otherwise objectionable" means any material that is similar in type to obscene, lewd, lascivious, filthy, excessively violent, or harassing materials.

b. "Good faith"

The phrase "good faith" in section 230(c) is also ambiguous. On one hand, most courts, in interpreting the phrase, have looked to pretext, dishonesty, or refusing to explain wrongful behavior when finding good faith or lack thereof in the removal of content. As the United States Court of Appeals for the Ninth Circuit explains, "unless § 230(c)(2)(B) imposes some good faith limitation on what a blocking software provider can consider 'otherwise objectionable' . . . immunity might stretch to cover conduct Congress very likely did not intend to immunize." Under the generous coverage of section 230(c)(2)(B)'s immunity language, a blocking software provider might abuse that immunity to block content for anticompetitive purposes or merely at its malicious whim, under the cover of considering such material "otherwise objectionable."[118] At the same time, some courts, focusing the words "the provider or user considers to be

[118] Zango, 568 F.3d at 1178 (Fisher, J., concurring). The Ninth Circuit has adopted Judge Fisher's reasoning. See Enigma, 946 F.3d at 1049.

obscene," see the provision's immunity available whenever an interactive computer service simply claims to consider the material as fitting within the provision's categories. Thus, "good faith" simply means the existence of some "subjective intent."[119]

Good faith requires transparency about content moderation disputes processes. In order to qualify for section 230(c)(2)'s immunity, a social media platform, or any interactive computer service, must demonstrate in a transparent way that when it takes action pursuant to section 230(c)(2), it provides adequate notice, reasoned explanation, or a meaningful opportunity to be heard."[120]

To ensure clear and consistent interpretation of the "good faith" standard, NTIA requests that the FCC further add the below to newly requested 47 CFR Chapter I Subchapter E Section 130.02:

> **(e) "good faith"**
> A platform restricts access to or availability of specific material (including, without limitation, its scope or reach) by itself, any agent, or any unrelated party in "good faith" under 47 U.S.C. § (c)(2)(A) if it:
>
> i. restricts access to or availability of material or bars or refuses service to any person consistent with publicly available terms of service or use that state plainly and with particularity the criteria the interactive computer service employs in its content-moderation practices, including by any partially or fully automated processes, and that are in effect on the date such content is first posted;
> ii. has an objectively reasonable belief that the material falls within one of the listed categories set forth in 47 U.S.C. § 230(c)(2)(A);
> iii. does not restrict access to or availability of material on deceptive or pretextual grounds, and does not apply its terms of service or use to restrict access to or availability of material that is similarly situated to material that the interactive computer service intentionally declines to restrict; and
> iv. supplies the interactive computer service of the material with timely notice describing with particularity the interactive computer service's reasonable factual basis for the restriction of access and a meaningful opportunity to respond, unless the interactive computer service has an objectively

[119] Domen, 433 F.Supp. 3d 592.
[120] E.O. 13925, Sec. 2(b).

reasonable belief that the content is related to criminal activity or such notice would risk imminent physical harm to others.

3. Section 230(c)(1) and 230(f)(3)

Section 230(c)(1) places "information content providers," i.e., entities that create and post content, outside its protections. This means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the internet, does not receive the statute's shield. Numerous cases have found that interactive computer service's designs and policies render it an internet content provider, outside of section 230(c)(1)'s protection. But the point at which a platform's form and policies are so intertwined with users' postings so as to render the platform an "information content provider" is not clear.

Courts have proposed numerous interpretations, most influentially in the Ninth Circuit in Fair Housing Council of San Fernando Valley v. Roommates.Com.[121] There, the court found that "[b]y requiring subscribers to provide the information as a condition of accessing its service, and by providing a limited set of pre-populated answers, Roommate becomes much more than a passive transmitter of information."[122] The court continued, "[w]e interpret the term 'development' as referring not merely to augmenting the content generally, but to materially contributing to its alleged unlawfulness. In other words, a website helps to develop unlawful content, and thus falls within the exception to section 230, if it contributes materially to the alleged illegality of the conduct."[123] But, this definition has failed to provide clear guidance, with courts struggling to define "material contribution."[124]

[121] Fair Hous. Council, 521 F.3d at 1166.
[122] Id.
[123] Id. at 1167–68 (emphasis added); see also Dirty World Entertainment, 755 F.3d at 411.
[124] See, e.g., People v. Bollaert, 248 Cal. App. 4th 699, 717 (2016).

Further, not all courts accept the material contribution standard. The Seventh Circuit concludes that "[a] company can, however, be liable for creating and posting, inducing another to post, or otherwise actively participating in the posting of a defamatory statement in a forum that that company maintains."[125] Other circuits conclude that a website becomes an information content provider by "solicit[ing] requests" for the information and then "pa[ying] researchers to obtain it."[126]

This confusion stems from the difference between the way an online bulletin board worked in the 1990s, which simply posted content, and how social media works today. As Federal Trade Commissioner Rohit Chopra explained, new social media shape and control information and online experience often as an expression of platforms' and their advertisers' goals rather than their users':

> "[Section 230] seeks to foster an environment where information and ideas can flourish. If a company is just helping move information from point A to point B, that company is just like the mail carrier or the telegraph company. That makes sense . . . . But the tech market has dramatically shifted in the decades since this law was enacted . . . . I would argue that once platforms started prioritizing their paid predictions, the content became more a reflection of advertisers targeting users, than users' own preferences."[127]

In light of modern technology, the FCC should clarify the circumstances under which an interactive computer service becomes an information content provider. Interactive computer services that editorialize particular user comments by adding special responses or warnings appear to develop and create content in any normal use of the words. Analogously, district

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[125] Huon v. Denton, 841 F.3d 733, 742 (7th Cir. 2016).
[126] FTC v. Accusearch Inc., 570 F.3d 1187, 1199–1200 (10th Cir. 2009).
[127] Rohit Chopra, Tech Platforms, Content Creators, and Immunity, American Bar Association, Section of Antitrust Law Annual Spring Meeting, Washington, D.C. (Mar. 28, 2019) (transcript available online at https://www.ftc.gov/system/files/documents/public_statements/1510713/chopra_-_aba_spring_meeting_3-28-19_0.pdf (last visited June 15, 2020)).

courts have concluded that when interactive computer services' "employees . . . authored comments," the interactive computer services would become content providers.[128] In addition, prioritization of content under a variety of techniques, particularly when it appears to reflect a particularly viewpoint, might render an entire platform a vehicle for expression and thus an information content provider.

To clarify when interactive computer services become information content providers through developing and creating content through the presentation of user-provided material, NTIA requests that the FCC add the below Subpart E to 47 CFR Chapter I:

> **Subpart E. Clarifying Subsection 230(f)(2).**
> § 130.03
> As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:
>
> For purposes of 47 U.S.C. § 230(f)(3), "responsible, in whole or in part, for the creation or development of information" includes substantively contributing to, modifying, altering, presenting or prioritizing with a reasonably discernible viewpoint, commenting upon, or editorializing about content provided by another information content provider.

4. "Treated as a Publisher or Speaker"

Finally, the ambiguous term "treated as a publisher or speaker" is a fundamental question for interpreting that courts in general have not addressed squarely. One of the animating concerns for section 230 was court decisions holding online platforms liable as publishers for third-party speech, when in fact they were merely passive bulletin boards. By prohibiting an interactive computer service from being "treated" as a publisher or speaker, therefore, section 230 could be interpreted as not converting non-publisher platforms into publishers simply because they passively transmit third-party content. That does not, however, mean that the

[128] Huon, 841 F.3d at 742.

statute meant to immunize online platforms when they actually act as publishers and exert significant control over the third-party speech and the message it conveys.

FCC Chairman Pai made a similar point by asking if selective content moderation based on ideology eventually becomes "editorial judgment":

> Are these tech giants running impartial digital platforms over which they don't exercise editorial judgment when it comes to content? Or do they in fact decide what speech is allowed and what is not and discriminate based on ideology and/or political affiliation? [129]

If content-moderating can never, no matter how extreme or arbitrary, become editorializing that no longer remains the "speech of another," then section 230(c)(1) will subsume section 230(c)(2) and eliminate liability for all interactive computer services' decisions to restrict content. Interpreting "speaker or publisher" so broadly is especially harmful when platforms are opaque and deceptive in their content-monitoring policies.

This concern is hardly theoretical, given the highly inconsistent, baffling, and even ideologically driven content moderating decisions that the large interactive computer services have made, at least according to numerous accounts. For instance, one interactive computer service made the editorial decision to exclude legal content pertaining to firearms,[130] content that was deemed acceptable for broadcast television,[131] thereby chilling the speech of a political candidate supportive of gun rights. Another interactive computer service has suppressed the

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[129] Ajit Pai, What I Hope to Learn from the Tech Giants, FCC Blog (Sept. 4, 2018), https://www.fcc.gov/news-events/blog/2018/09/04/what-i-hope-learn-tech-giants.
[130] Facebook, Inc., Facebook Prohibited Content: 7. Weapons, Ammunition, or Explosives, https://www.facebook.com/policies/ads/prohibited_content/weapons (last visited June 15, 2020).
[131] Maria Schultz, Facebook pulls ad from gun-toting Georgia candidate taking on Antifa: 'Big Tech censorship of conservatives must end', Fox News (June 6, 2020), https://www.foxnews.com/politics/facebook-pulls-ad-from-gun-toting-georgia-candidate-big-tech-censorship-of-conservatives-must-end.

speech of an American politician for "glorifying violence"[132] while permitting that of a foreign politician glorifying violence to pass without action,[133] as publicly noted by the FCC Chairman.[134] Still another interactive computer service, purporting to be a document repository and editing service,[135] deleted a controversial paper about a potential therapy for COVID-19,[136] stating simply that it was in violation of the site terms of service.[137] A major food-workers' union has objected to social media-implemented internal communication networks for companies, or "intranets," implementing automated censorship to prevent discussions of unionization.[138]

At common law, as a general matter, one is liable for defamation only if one makes "an affirmative act of publication to a third party."[139] This "affirmative act requirement" ordinarily

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[132] Alex Hern, Twitter hides Donald Trump tweet for 'glorifying violence', The Guardian (May 29, 2020), https://www.theguardian.com/technology/2020/may/29/twitter-hides-donald-trump-tweet-glorifying-violence.
[133] White House official Twitter account (May 29, 2020), https://twitter.com/WhiteHouse/status/1266367168603721728.
[134] Ajit Pai verified Twitter account (May 29, 2020), https://twitter.com/AjitPaiFCC/status/1266368492258816002.
[135] Google, Inc., Google Docs "About" page, https://www.google.com/docs/about/ (last visited June 15, 2020) ("Google Docs brings your documents to life with smart editing and styling tools to help you easily format text and paragraphs. Choose from hundreds of fonts, add links, images, and drawings. All for free . . . . Access, create, and edit your documents wherever you go — from your phone, tablet, or computer — even when there's no connection.").
[136] Thomas R. Broker, et al., An Effective Treatment for Coronavirus (COVID-19), (Mar. 13, 2020), page archived at https://archive.is/BvzkY (last visited June 15, 2020).
[137] Google, Inc., Google Docs result for https://docs.google.com/document/d/e/2PACX-1vTi-g18ftNZUMRAj2SwRPodtscFio7bJ7GdNgbJAGbdfF67WuRJB3ZsidgpidB2eocFHAVjIL-7deJ7/pub (last visited June 15, 2020) ("We're sorry. You can't access this item because it is in violation of our Terms of Service.").
[138] United Food and Commercial Workers International Union, Facebook Censorship of Worker Efforts to Unionize Threatens Push to Strengthen Protections for Essential Workers During COVID-19 Pandemic (June 12, 2020), http://www.ufcw.org/2020/06/12/censorship/.
[139] Benjamin C. Zipursky, Online Defamation, Legal Concepts, and the Good Samaritan, 51 Val. U. L. Rev. 1, 18 (2016) , available at https://scholar.valpo.edu/cgi/viewcontent.cgi?article=2426&context=vulr.

"depict[s] the defendant as part of the initial making or publishing of a statement."[140] The common law also recognized a "narrow exception to the rule that there must be an affirmative act of publishing a statement."[141] A person "while not actually publishing—will be subjected to liability for the reputational injury that is attributable to the defendant's failure to remove a defamatory statement published by another person."[142] Such a duty might apply where a defendant has undertaken an affirmative duty to remove. Stratton Oakmont embodies the latter idea: The court held that Prodigy, having undertaken to moderate some content on its page, thereby assumed an affirmative duty to moderate all content on its site. At common law, then, the publication element of defamation could be satisfied either through the rule—an affirmative act—or the exception—an omission where an affirmative duty applies.

Section 230(c)(1)'s "treated as the publisher or speaker" could plausibly be understood to foreclose liability only if a defendant would satisfy the exception. Satisfying the exception subjects one to defamation liability as if he were the publisher or speaker of the content, although he did not "actually publish[]" the content.[143] He is not a "true publisher" in the sense of satisfying the affirmative act requirement, but he is deemed or regarded as if he were because he had an affirmative duty to moderate.[144] This interpretation of section 230(c)(1) reads it to foreclose the very argument courts may have been on track to embrace after Stratton Oakmont, viz., that a platform has an affirmative duty to remove defamatory content and will be treated as satisfying the publication element of defamation for nonfeasance in the same way as a true publisher. Section 230(c)(1) states—in the face of Stratton Oakmont's contrary holding—a

[140] Id. at 19.
[141] Id. at 20.
[142] Id. at 21 (citing Restatement (Second) of Torts § 577(2) (Am. Law Inst. 1977)).
[143] Zipursky, 51 Val. L. Rev. at 21.
[144] Id. at 45.

general rule: There is no affirmative duty to remove. For that reason, section 230(c)(1) should be construed to concern only failures to remove and not takedowns, and not to apply when a platform "actually publishes" content.

NTIA suggests that the FCC can clarify the ambiguous phrase "speaker or publisher" by establishing that section 230(c)(1) does not immunize the conduct of an interactive service provider that is actually acting as a publisher or speaker in the traditional sense. Two points follow. First, when a platform moderates outside of section 230(c)(2)(A), section 230(c)(1) does not provide an additional, broader immunity that shields content takedowns more generally. Such affirmative acts are outside of the scope of (c)(1). Second, when a platform reviews third-party content already displayed on the internet and affirmatively vouches for it, editorializes, recommends, or promotes such content on the basis of the content's substance or message, the platform receives no section 230(c)(1) immunity. NTIA therefore requests that the FCC further add the below to newly requested Subpart E to 47 CFR Chapter I:

Subpart E. Clarifying Subsection 230(f)(2).

§ 130.04

(c) An interactive computer service is not being "treated as the publisher or speaker of any information provided by another information content provider" when it actually publishes its own or third-party content. Circumstances in which an interactive computer service actually publishes content include when:

> (i) it affirmatively solicits or selects to display information or content either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool pursuant to a reasonably discernible viewpoint or message, without having been prompted to, asked to, or searched for by the user; and (ii) it reviews third-party content already displayed on the Internet and affirmatively vouches for, editorializes, recommends, or promotes such content to other Internet users on the basis of the content's substance or messages. This paragraph applies to a review conducted, and a recommendation made, either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool.

(d) An interactive computer service does not publish content merely by:

(i) providing content in a form or manner that the user chooses, such as non-chronological order, explicit user preferences, or because a default setting of the service provides it, and the interactive computer service fully informs the user of this default and allows its disabling; or

(ii) transmitting, displaying, or otherwise distributing such content, or merely by virtue of moderating third-party content consistent with a good faith application of its terms of service in force at the time content is first posted. Such an interactive computer service may not, by virtue of such conduct, be "treated as a publisher or speaker" of that third-party content. 47 U.S.C. § 230(c)(1).

VI. Title I and Sections 163 and 257 of the Act Permit the FCC to Impose Disclosure Requirements on Information Services

With roots in the Modified Final Judgment for the break-up of AT&T[145] and codified by the Telecommunications Act of 1996,[146] the term "information service" refers to making information available via telecommunications. Under FCC and judicial precedent, social media sites are "information services." As such, courts have long recognized the Commission's power to require disclosure of these services under sections 163 and 257.

A. Social media are information services

Section 230(f)(2) explicitly classifies "interactive computer services" as "information services," as defined in 47 U.S.C. § 153(20).[147] Further, social media fits the FCC's definition of

[145] United States v. Am. Tel. & Tel. Co., 552 F. Supp. 131, 179 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) (observing that "'Information services' are defined in the proposed decree at Section IV(J) as: the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information which may be conveyed via telecommunications").

[146] 47 U.S.C. § 153(24).

[147] Id. ("[T]he offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.").

enhanced services.[148] In Brand X, the Supreme Court explained, "The definitions of the terms 'telecommunications service' and 'information service' established by the 1996 Act are similar to the Computer II basic-and enhanced-service classifications" with "'information service'—the analog to enhanced service."[149]

Numerous courts have ruled that search engines, browsers and internet social media precursors such as chat rooms are information services.[150] Courts have long recognized edge providers as information services under Title I. For example, in Barnes, the U.S. Court of Appeals for the Ninth Circuit classifies Yahoo's social networking services an "information service," interchangeably with "interactive computer service," and in Howard v. Am. Online, the same court designates America Online's messaging facilities "enhanced services."[151]

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[148] 47 CFR § 64.702 ("[S]ervices, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information.").

[149] Nat'l Cable & Telecommunications Ass'n v. Brand X Internet Servs., 545 U.S. 967, 977 (2005).

[150] Mozilla Corp. v. F.C.C., 940 F.3d 1, 34 (D.C. Cir. 2019) ("But quite apart from the fact that the role of ISP-provided browsers and search engines appears very modest compared to that of DNS and caching in ISPs' overall provision of Internet access, Petitioners are in a weak posture to deny that inclusion of 'search engines and web browsers' could support an 'information service' designation . . . since those appear to be examples of the 'walled garden' services that Petitioners hold up as models of 'information service'-eligible offerings in their gloss of Brand X.") (internal citations omitted); FTC v. Am. eVoice, Ltd., 242 F. Supp. 3d 1119 (D. Mont. 2017) (Email and online "chat rooms" "were enhanced services because they utilized transmission lines to function, as opposed to acting as a pipeline for the transfer of information . . . . 'This conclusion is reasonable because e-mail fits the definition of an enhanced service.'" (quoting Howard v. Am. Online Inc., 208 F.3d 741, 746 (9th Cir. 2000)). "Also excluded from coverage are all information services, such as Internet service providers or services such as Prodigy and America-On-Line." H.R. Rep. No. 103-827, at 18 (1994), as reprinted in 1994 U.S.C.C.A.N. 3489, 3498

[151] Barnes, 570 F.3d at 1101.

B. Several statutory sections empower the FCC to mandate disclosure

Beyond having jurisdiction over social media as information services, the FCC has clear statutory authority to impose disclosure requirements under sections 163 and 257 of the Communications Act. Section 163 charges the FCC to "consider all forms of competition, including the effect of intermodal competition, facilities-based competition, and competition from new and emergent communications services, including the provision of content and communications using the Internet" and "assess whether laws, regulations, regulatory practices . . . pose a barrier to competitive entry into the communications marketplace or to the competitive expansion of existing providers of communications services."[152] Section 257(a) of the Communications Act requires the FCC to examine market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services."[153]

In its 2018 Internet Order, the Commission relied on section 257 to impose service transparency requirements on providers of the information service of broadband internet access. It reasoned that doing so would reduce entry barriers.[154] Similar reasoning applies to requiring transparency for social media. Clear, current, readily accessible and understandable descriptions of an interactive computer service provider's content moderation policies would help enterprising content providers fashion their offerings so that they can be provided across multiple

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[152] 47 U.S.C. § 163.

[153] 47 U.S.C. § 257(a) (2018). While section 257 was amended and repealed in part, its authority remained intact in section 163. "Congress emphasized that '[n]othing in this title [the amendment to the Telecommunications Act creating section 163] or the amendments made by this title shall be construed to expand or contract the authority of the Commission." Mozilla, 940 F.3d at 47 citing Pub. L. No. 115-141, Div. P, § 403, 132 Stat. at 1090.

[154] Federal Communications Commission, In the Matter of Restoring Internet Freedom, 33 F.C.C. Rcd. 311 (2018).

platforms with reduced costs and friction for the provider and fewer disruptions to user experiences.[155]

Perhaps more important, information about an interactive computer service provider's content moderation policies would help entities design filtering products that could improve the providers' implementation of those policies, or assist consumers in remedying the gaps they may see in the providers' policies. Certainly, empowering consumers with blocking technologies that they choose and control—rather than accepting a platform's top-down centralized decisions, would directly advance section 230's policy of encouraging "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."[156] Increasing transparency about online platforms' content moderation practices would also enable users to make more informed choices about competitive alternatives.

Consumers today have a one-way relationship with social media transparency; platforms know everything about consumers, but consumers know very little about how or why platforms exercise influence or direct control over consumers' speech. Certain information disappears or becomes difficult to find, while other information is promoted and prominently displayed. Inevitably, some consumers and content creators begin to worry that secretive forces within platform providers are manipulating social media for ends that can only be guessed at.[157] Such suspicion is inevitable when there is so little transparency about the process behind the social media visibility of user-provided content, even when policies are applied fairly and no

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[155] See supra Section IV.
[156] 47 U.S.C. § 230(a)(3).
[157] Rod Dreher, Google Blacklists Conservative Websites (July 21, 2020), https://www.theamericanconservative.com/dreher/google-blacklists-conservative-websites/.

wrongdoing has taken place. By increasing transparency to consumers, platforms would ensure that consumers can choose to consume social media whose policies they agree with without fear that manipulations to which they did not consent are happening behind the scenes.

The importance of disclosure to our communications networks cannot be underestimated. Chairman Pai recognizes that democracies must require transparency and to ensure the proper function of essential communications networks.[158] That is why, when eliminating Title II common carrier so-called "network neutrality" regulations, Chairman Pai's FCC retained Title I disclosure requirements for broadband access service providers.

The same is true for other information service providers. Speaking of the social media platforms, FCC Chairman Ajit Pai asked "how do these companies make decisions about what we see and what we don't? And who makes those decisions?"[159] For social media, it is particularly important to ensure that large firms avoid "deceptive or pretextual actions stifling free and open debate by censoring certain viewpoints,"[160] or engage in deceptive or pretextual actions (often contrary to their stated terms of service) to stifle viewpoints with which they disagree."[161]

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[158] Federal Communications Commission, In the Matter of Restoring Internet Freedom, WC Docket No. 17-108, Declaratory Ruling, Report And Order, And Order (Jan, 4, 2018) ¶ 209, available at https://www.fcc.gov/document/fcc-releases-restoring-internet-freedom-order ("'Sunlight,' Justice Brandeis famously noted, 'is . . . the best of disinfectants.' This is the case in our domain. Properly tailored transparency disclosures provide valuable information to the Commission to enable it to meet its statutory obligation to observe the communications marketplace to monitor the introduction of new services and technologies, and to identify and eliminate potential marketplace barriers for the provision of information services. Such disclosures also provide valuable information to other Internet ecosystem participants.").

[159] Ajit Pai, What I Hope to Learn from the Tech Giants (Sept. 4, 2018), https://www.fcc.gov/news-events/blog/2018/09/04/what-i-hope-learn-tech-giants (last visited June 15, 2020).

[160] E.O. 13925, Section 2(a).

[161] Id.

To prevent these ends, NTIA requests that the FCC further add the below to Subpart E to 47 CFR Chapter I Subchapter A Part 8:

§ 8.2 Transparency for Interactive Computer Services.

Any person providing an interactive computer service in a manner through a mass-market retail offering to the public shall publicly disclose accurate information regarding its content-management mechanisms as well as any other content moderation, promotion, and other curation practices of its interactive computer service sufficient to enable (i) consumers to make informed choices regarding the purchase and use of such service and (ii) entrepreneurs and other small businesses to develop, market, and maintain offerings by means of such service. Such disclosure shall be made via a publicly available, easily accessible website or through transmittal to the Commission.

VII. Conclusion

For the foregoing reasons, NTIA respectfully requests that the Commission institute a rulemaking to interpret Section 230 of the Communications Act.

Respectfully submitted,

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Douglas Kinkoph
Performing the Delegated Duties of the
Assistant Secretary for Commerce for
Communications and Information

July 27, 2020

APPENDIX A: Proposed Rules

47 CFR Chapter I, Subchapter E
Part 130 – Section 230 of the Communications Decency Act.

Interpreting Subsection 230(c)(1) and Its Interaction With Subsection 230(c)(2).
§ 130.01
As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

(a) 47 U.S.C. 230(c)(1) applies to an interactive computer service for claims arising from failure to remove information provided by another information content provider. Section 230(c)(1) has no application to any interactive computer service's decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service. Any applicable immunity for matters described in the immediately preceding sentence shall be provided solely by 47 U.S.C. § 230(c)(2).

(b) An interactive computer service is not a publisher or speaker of information provided by another information content provider solely on account of actions voluntarily taken in good faith to restrict access to or availability of specific material in accordance with subsection (c)(2)(A) or consistent with its terms of service or use.

(c) An interactive computer service is not being "treated as the publisher or speaker of any information provided by another information content provider" when it actually publishes its own or third-party content. Circumstances in which an interactive computer service actually publishes content include when:

(i) it affirmatively solicits or selects to display information or content either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool pursuant to a reasonably discernible viewpoint or message, without having been prompted to, asked to, or searched for by the user;

(ii) it reviews third-party content already displayed on the Internet and affirmatively vouches for, editorializes, recommends, or promotes such content to other Internet users on the basis of the content's substance. This paragraph applies to a review conducted, and a recommendation made, either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool.

(d) An interactive computer service does not publish content merely by:

(1) providing content in a form or manner that the user chooses, such as non-chronological order, explicit user preferences, or because a default

setting of the service provides it, and the interactive computer service fully informs the user of this default and allows its disabling; or
(2) transmitting, displaying, or otherwise distributing such content, or merely by virtue of moderating third-party content consistent with a good faith application of its terms of service in force at the time content is first posted. Such an interactive computer service may not, by virtue of such conduct, be "treated as a publisher or speaker" of that third-party content. 47 U.S.C. § 230(c)(1).

Clarifying Subsection 230(c)(2).
§ 130.02
As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

(a) "obscene," "lewd," lascivious" and "filthy"
The terms "obscene," "lewd," "lascivious," and "filthy" mean material that

iv. taken as a whole, appeals to the prurient interest in sex or portrays sexual conduct in a patently offensive way, and which, taken as a whole, does not have serious literary, artistic, political, or scientific value;
v. depicts or describes sexual or excretory organs or activities in terms patently offensive as measured by contemporary community standards; to the average person, applying contemporary community standards; or
vi. signifies the form of immorality which has relation to sexual impurity, and have the same meaning as is given them at common law in prosecutions for obscene libel.

(b) "excessively violent"
The term "excessively violent" means material that

iii. is likely to be deemed violent and for mature audiences according the Federal Communications Commission's V-chip regulatory regime and TV Parental Guidance, promulgated pursuant to Section 551 of the 1996 Telecommunications Act Pub. L. No. 104-104, § 551, 110 Stat. 139-42 (codified at 47 U.S.C. § 303; § 330(c)(4));
iv. constitutes or intends to advocate domestic terrorism or international terrorism, each as defined in 18 U.S.C. § 2331 ("terrorism").

(c) "harassing"
The term "harassing" means any material that

iv. that sent by an information content provider that has the subjective intent to abuse, threaten, or harass any specific person and is lacking in any serious literary, artistic, political, or scientific value;
v. regulated by the CAN-SPAM Act of 2003, 117 Stat. 2699; or
vi. that is malicious computer code intended (whether or not by the immediate disseminator) to damage or interfere with the operation of a computer.

(d) "otherwise objectionable"
The term "otherwise objectionable" means any material that is similar in type to obscene, lewd, lascivious, filthy, excessively violent, or harassing materials.

(e) "good faith"

A platform restricts access to or availability of specific material (including, without limitation, its scope or reach) by itself, any agent, or any unrelated party in "good faith" under 47 U.S.C. § (c)(2)(A) if it:

v. restricts access to or availability of material or bars or refuses service to any person consistent with publicly available terms of service or use that state plainly and with particularity the criteria the interactive computer service employs in its content-moderation practices, including by any partially or fully automated processes, and that are in effect on the date such content is first posted;

vi. has an objectively reasonable belief that the material falls within one of the listed categories set forth in 47 U.S.C. § 230(c)(2)(A);

vii. does not restrict access to or availability of material on deceptive or pretextual grounds, and does not apply its terms of service or use to restrict access to or availability of material that is similarly situated to material that the interactive computer service intentionally declines to restrict; and

viii. supplies the interactive computer service of the material with timely notice describing with particularity the interactive computer service's reasonable factual basis for the restriction of access and a meaningful opportunity to respond, unless the interactive computer service has an objectively reasonable belief that the content is related to criminal activity or such notice would risk imminent physical harm to others.

Clarifying Subsection 230(f)(2).

§ 130.03

As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

For purposes of 47 U.S.C. § 230(f)(3), "responsible, in whole or in part, for the creation or development of information" includes substantively contributing to, modifying, altering, presenting with a reasonably discernible viewpoint, commenting upon, or editorializing about content provided by another information content provider.

47 CFR Chapter I Subchapter A Part 8 ---Internet Freedom.

§ 8.2 Transparency for Interactive Computer Services.

Any person providing an interactive computer service in a manner through a mass-market retail offering to the public shall publicly disclose accurate information regarding its content-management mechanisms as well as any other content moderation, promotion, and other curation practices of its interactive computer service sufficient to enable (i) consumers to make informed choices regarding the purchase and use of such service and (ii) entrepreneurs and other small businesses to develop, market, and maintain offerings by means of such service. Such disclosure shall be made via a publicly available, easily accessible website or through transmittal to the Commission.

From:	Candeub, Adam
To:	Adam Candeub
Subject:	FW: NTIA Petition for Rulemaking re: Social Media Executive Order
Date:	Saturday, September 12, 2020 10:57:06 AM
Attachments:	NTIA Social Media Petition for Rulemaking 7.27.20.pdf NTIA Social Media Petition for Rulemaking 7.27.20.docx

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From: Smith, Kathy <KSmith@ntia.gov>
Sent: Monday, July 27, 2020 3:58 PM
To: Kinkoph, Douglas <DKinkoph@ntia.gov>; Candeub, Adam <acandeub@ntia.gov>; Simington, Nathan <nsimington@ntia.gov>
Cc: Yusko, Stephen F. <SYusko@ntia.gov>
Subject: NTIA Petition for Rulemaking re: Social Media Executive Order

Attached please find a Word file containing the final of the Petition for Rulemaking that incorporates the last few minor footnote edits (Adam and Nathan) and Doug's signature block and deletes the Table of Authorities. Please note the Word file still contains the metadata so I would recommend not sharing it outside of Commerce even under an embargo

I have also attached a pdf file for signature. It has been stripped of all metadata.

Please sign it (when you regain access to Citrix) and send it back to me. I will file it through ECFS at 5 p.m. today and send you all the confirmation page.

Kathy Smith
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National Telecommunications and Information Administration
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Email: ksmith@ntia.gov

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Section 230 of the	)	File No. RM-_____
Communications Act of 1934	)	

To: The Commission

PETITION FOR RULEMAKING OF THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

National Telecommunications and
Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230
(202) 482-1816

July 27, 2020

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FEDERAL COMMUNICATIONS COMMISSION
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Communications Act of 1934	)	

To: The Commission

PETITION FOR RULEMAKING OF THE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

Pursuant to section 1.401 of the Code of Federal Regulations,[1] in accordance with Executive Order 13925 (E.O. 13925),[2] and through the National Telecommunications and Information Administration (NTIA), the Secretary of Commerce (Secretary) respectfully requests that the Federal Communications Commission (FCC or Commission) initiate a rulemaking to clarify the provisions of section 230 of the Communications Act of 1934, as amended.[3] NTIA, as the President's principal adviser on domestic and international telecommunications and information policy, is charged with developing and advocating policies concerning the regulation of the telecommunications industry and "ensur[ing] that the views of the executive branch on telecommunications matters are effectively presented to the Commission . . . ."[4] Specifically, per E.O. 13925, NTIA requests that the Commission propose rules to clarify:

[1] 47 CFR § 1.401(a).
[2] Exec. Order No. 13925: Preventing Online Censorship, 85 Fed. Reg. 34,079 (June 2, 2020) (E.O. 13925).
[3] 47 U.S.C. § 230.
[4] 47 U.S.C. § 902(b)(2)(J); see also 47 U.S.C. §§ 901(c)(3), 902(b)(2)(I) (setting forth related duties).

(i) the interaction between subparagraphs (c)(1) and (c)(2) of section 230, in particular to clarify and determine the circumstances under which a provider of an interactive computer service that restricts access to content in a manner not specifically protected by subparagraph (c)(2)(a) may also not be able to claim protection under subparagraph (c)(1);[5]

(ii) the conditions under which an action restricting access to or availability of material is not "taken in good faith" within the meaning of subparagraph (c)(2)(A) of section 230, particularly whether actions can be "taken in good faith" if they are

(A) deceptive, pretextual, or inconsistent with a provider's terms of service; or

(B) taken after failing to provide adequate notice, reasoned explanation, or a meaningful opportunity to be heard;[6] and

(iii) any another proposed regulation that NTIA concludes may be appropriate to advance the policy described in subsection (a) of E.O. 13925, to impose disclosure requirements similar those imposed on other internet companies, such as major broadband service providers, to promote free and open debate on the internet.[7]

[5] See infra sections V.E.1, V.E.3 and section V.E.4.
[6] See infra section V.E.2.
[7] See infra section VI.

I. Statement of Interest

Since its inception in 1978, NTIA has consistently supported pro-competitive, pro-consumer telecommunications and internet policies. NTIA files this petition pursuant to E.O. 13925 to ensure that section 230 of the Communications Act of 1934, as amended, continues to further these goals. The President, through E.O. 13925, has directed the Secretary to file this petition for rulemaking through NTIA.[8]

II. Summary of Argument

Freedom of expression defends all our other freedoms. Only in a society that protects free expression can citizens criticize their leaders without fear, check their excesses, and expose their abuses. As Ben Franklin stated, "[w]hoever would overthrow the Liberty of a Nation, must begin by subduing the Freeness of Speech."[9] However, social media and its growing dominance present troubling questions on how to preserve First Amendment ideals and promote diversity of voices in modern communications technology. Social media's power stems in part from the legal immunities granted by the Communications Decency Act of 1996.[10] Congress passed the statute in the beginning of the internet age with the goal of creating a safe internet for children. It did so by protecting children from pornography and providing incentives for platforms to

[8] E.O. 13925, Section 2(b).
[9] Benjamin Franklin, Silence Dogood No. 8, The New-England Courant, July 9, 1722.
[10] Communications Decency Act of 1996 (CDA), Pub. L. No. 104-104, 110 Stat. 133, Title V—Obscenity and Violence, § 509 "Online family empowerment," codified at 47 U.S.C. 230, "Protection for private blocking and screening of offensive material." The CDA was incorporated as Title V to the Telecommunications Act of 1996, which in turn, was incorporated in the Communications Act of 1934. While these laws are all now part of the same statute, they do have separate histories and will be referred to individually when necessary.

remove harmful content. While the Supreme Court struck down the provisions limiting pornography, section 230 remained.[11]

Section 230 is the legislative response to a New York state case, Stratton Oakmont, Inc. v. Prodigy Servs. Co.[12] In this case, the court extended tort liability to internet bulletin boards and ruled that defendant Prodigy Services Company would be liable for the entire content of their platform if they engaged in editing and moderation to remove distasteful content.[13] Congress intended section 230 to offer platforms immunity from liability under certain circumstances, namely to encourage platforms to moderate specific types of material, mostly that are sexual or inappropriate to minors. It is vital to remember, however, that Congress in section 230 also had the express purpose of ensuring that the "Internet and other [internet platforms] offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity."[14]

Times have changed, and the liability rules appropriate in 1996 may no longer further Congress's purpose that section 230 further a "true diversity of political discourse." A handful of large social media platforms delivering varied types of content over high-speed internet have replaced the sprawling world of dial-up Internet Service Providers (ISPs) and countless bulletin boards hosting static postings. Further, with artificial intelligence and automated methods of textual analysis to flag harmful content now available, unlike at the time of Stratton Oakmont, Inc., platforms no longer need to manually review each individual post but can review, at much

[11] Reno v. American Civil Liberties Union, 521 U.S. 844 (1997).
[12] 1995 WL 323710 (N.Y. Sup. Ct., May 24, 1995) (unpublished). See also, Force v. Facebook, Inc., 934 F.3d 53, 63-64 (2d Cir. 2019) ("To overrule Stratton . . . .").
[13] Stratton Oakmont, 1995 WL 323710, at *3.
[14] 47 U.S.C. § 230(a)(3).

lower cost, millions of posts.[15] Thus, the fundamental assumptions driving early section 230 interpretation are antiquated and lack force, thus necessitating a recalibration of section 230 protections to accommodate modern platforms and technologies.

The FCC should use its authorities to clarify ambiguities in section 230 so as to make its interpretation appropriate to the current internet marketplace and provide clearer guidance to courts, platforms, and users. NTIA urges the FCC to promulgate rules addressing the following points:

1. Clarify the relationship between subsections (c)(1) and (c)(2), lest they be read and applied in a manner that renders (c)(2) superfluous as some courts appear to be doing.

2. Specify that Section 230(c)(1) has no application to any interactive computer service's decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service.

3. Provide clearer guidance to courts, platforms, and users, on what content falls within (c)(2) immunity, particularly section 230(c)(2)'s "otherwise objectionable" language and its requirement that all removals be done in "good faith."

4. Specify that "responsible, in whole or in part, for the creation or development of information" in the definition of "information content provider," 47 U.S.C. § 230(f)(3), includes editorial decisions that modify or alter content, including but not limited to substantively contributing to, commenting upon, editorializing about, or presenting with a discernible viewpoint content provided by another information content provider.

[15] Adrian Shahbaz & Allie Funk, "Freedom on the Net 2019 Key Finding: Governments harness big data for social media surveillance," Freedom House, Social Media Surveillance, https://freedomhouse.org/report/freedom-on-the-net/2019/the-crisis-of-social-media/social-media-surveillance ("Social media surveillance refers to the collection and processing of personal data pulled from digital communication platforms, often through automated technology that allows for real-time aggregation, organization, and analysis of large amounts of metadata and content . . . . Advances in artificial intelligence (AI) have opened up new possibilities for automated mass surveillance.").

5. Mandate disclosure for internet transparency similar to that required of other internet companies, such as broadband service providers.

III. The Commission Should Act to Protect Free Speech Online

New regulations guiding the interpretation of section 230 are necessary to facilitate the provisions' interpretation in a way that best captures one of the nation's most important Constitutional freedoms. "Free speech is the bedrock of American democracy . . . . The freedom to express and debate ideas is the foundation for all of our rights as a free people."[16] Our democracy has long recognized that control of public discourse in the hands of too few stifles freedom of expression and risks undermining our political institutions. For centuries, Americans have taken action to maintain the free flow of information and ideas to ensure the fullest and most robust marketplace of ideas—from the Postal Service Act of 1792, one of Congress's first acts which established preferential rates for newspapers,[17] to nondiscrimination requirements for telegraphs and telephones,[18] to antitrust actions to ensure the free flow of news stories,[19] and to efforts to limit undue dominance in broadcast and cable media to guarantee the flow of information to television viewers.[20]

Yet today, free speech faces new threats. Many Americans follow the news, stay in touch with friends and family, and share their views on current events through social media and other

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[16] E.O. 13925, Section 1.
[17] Richard B. Kielbowicz, News in the Mail: The Press, Post Office and Public Information, 1700-1860s, at 33-34 (1989).
[18] Thomas B. Nachbar, The Public Network, 17 CommLaw Conspectus 67, 77 (2008). ("Nondiscriminatory access is . . . the order of the day for . . . telecommunications, and even cable television.").
[19] Associated Press v. United States, 326 U.S. 1 (1945).
[20] Turner Broad. Sys, Inc. v. F.C.C., 512 U.S. 622 (1994); F.C.C. v. National Citizens Comm. for Broad., 436 U.S. 775 (1978); Nat'l Broad. Co. v. United States, 319 U.S. 190 (1943); Time Warner Ent. Co. L.P. v. F.C.C., 240 F.3d 1126 (D.C. Cir. 2001).

online platforms. These platforms function, as the Supreme Court recognized, as a 21st century equivalent of the public square.[21] Provision and control of the public square is a public trust. Because it entails selecting which speech gets heard and by whom, social media can assimilate a collective conversation into a corporate voice with a corporate point of view. As the E.O. explains, "[w]hen large, powerful social media companies censor opinions with which they disagree, they exercise a dangerous power. They cease functioning as passive bulletin boards, and ought to be viewed and treated as content creators."[22] The Commission itself has previously recognized the importance of enabling "the widest possible dissemination of information from diverse and antagonistic sources" and "assuring that the public has access to a multiplicity of information sources" as internet regulations' essential goal.[23]

Unfortunately, large online platforms appear to engage in selective censorship that is harming our national discourse. The E.O. notes that "[t]ens of thousands of Americans have reported online platforms "flagging" content as inappropriate, even though it does not violate any stated terms of service" and is not unlawful. The platforms "mak[e] unannounced and unexplained changes to company policies that have the effect of disfavoring certain viewpoints and delet[e] content and entire accounts with no warning, no rationale, and no recourse."[24] FCC

[21] Packingham v. North Carolina, 137 S. Ct. 1730, 1732 (2017) ("Social media . . . are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge.").
[22] E.O. 13925, Section 1.
[23] Federal Communications Commission, In the Matter of Protecting and Promoting the Open Internet, GN Docket No. 14-28, FCC 15-24, Report and Order on Remand, Declaratory Ruling, and Order, 2015 WL 1120110, *268 (¶ 545) (quoting Turner, 512 U.S. at 663).
[24] E.O. 13925, Section 1; Divino Group LLC, et al. v. Google LLC, et al., 5:19-cv-4749-VKD, Dkt #20 (2d Am. Compl.) at ¶¶ 119-123, 128-247 (N.D. Cal. (San Jose Division), dated Aug. 13, 2019) (class action complaint alleging YouTube censorship of LGBT+ content).

Commissioner Brendan Carr has remarked, "there's no question that [large social media platforms] are engaging in editorial conduct, that these are not neutral platforms."[25] Others have expressed shock that while large social media platforms will censor or fact-check constitutionally elected democratic leaders, many social media companies welcome and facilitate censorship by the Chinese Communist Party, thereby spreading disinformation and communist propaganda related to China's mass imprisonment of religious minorities, the origins of the COVID-19 pandemic, and the pro-democracy protests in Hong Kong.[26] Unfortunately, few academic empirical studies exist of the phenomenon of social media bias.

Much of social media's overarching influence and power stems from the immunities it enjoys under expansive interpretations of section 230 of the Communications Decency Act,[27] a provision Congress passed in 1996 at the beginning of the internet era. Many early cases, understandably protective of a nascent industry, read section 230's protections expansively. But, given the maturing internet economy and emergence of dominant social media platforms, the FCC should re-examine section 230, as well as other provisions of the Communications Act of 1934. The FCC should determine how section 230 can best serve its goals of promoting internet

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[25] Jan Jekielek, On Social Media Bias, Trump's Executive Order, and the China Data Threat: FCC Commissioner Brendan Carr, The Epoch Times, June 1, 2020, https://www.theepochtimes.com/on-social-media-bias-trumps-executive-order-and-the-china-data-threat-fcc-commissioner-brendan-carr_3372161.html.

[26] See, e.g., Sigal Samuel, China paid Facebook and Twitter to help spread anti-Muslim propaganda, Vox, Aug. 22, 2019, https://www.vox.com/future-perfect/2019/8/22/20826971/facebook-twitter-china-misinformation-ughiur-muslim-internment-camps; Ryan Gallagher, China's Disinformation Effort Targets Virus, Researcher Says, Bloomberg News, May 12, 2020, https://www.bloomberg.com/news/articles/2020-05-12/china-s-disinformation-campaign-targets-virus-and-businessman; James Titcomb & Laurence Dodds, Chinese state media use Facebook adverts to champion Hong Kong crackdown, June 8, 2020, https://www.telegraph.co.uk/technology/2020/06/08/chinese-state-media-use-facebook-adverts-champion-hong-kong/.

[27] 47 U.S.C. § 230.

diversity and a free flow of ideas, as well as holding dominant platforms accountable for their editorial decisions, in new market conditions and technologies that have emerged since the 1990s.[28]

IV. Relevant Facts and Data: Technological and Market Changes

Contemporary social media platforms have vastly different offerings, business models, relationships to users and customers, and, indeed, roles in national life than the early online bulletin boards that Prodigy and AOL offered in 1996. The FCC should recognize that the liability protections appropriate to internet firms in 1996 are different because modern firms have much greater economic power, play a bigger, if not dominant, role in American political and social discourse, and, with machine learning and other artificial techniques, have and exercise much greater power to control and monitor content and users.

CompuServe, Prodigy, America Online, and their competitors had fundamentally different business models from modern social media companies.[29] They had proprietary server banks, and their business model was to charge consumers for access, with significant surcharges

[28] See, e.g., Cubby, Inc. v. CompuServe Inc., 776 F.Supp. 135 (S.D.N.Y. 1991) (addressing CompuServe's 1990 service providing various online subscriber forums for certain groups).
[29] Andrew Pollack, Ruling May Not Aid Videotex, N.Y. Times, Sept. 15, 1987, at D1, https://www.nytimes.com/1987/09/15/business/ruling-may-not-aid-videotex.html (last visited July 27, 2020) ("The Videotex Industry Association estimates that there are 40 consumer-oriented services, such as CompuServe and the Source, in the United States, with a total membership of 750,000.").

for use of social features.[30] They were not interoperable,[31] There was thus no online "general public" population about whom information could be known, nor were there business partners to whom information on members of the public could be aggregated and sold. Online services faced a competitive landscape.

Online services competed with one another by commissioning or developing their own games, chat systems, financial-markets reporting, news services, and in-network mail services.[32] As users paid to connect, and thus directly funded online services, most online services did not contain advertising. The online service business model was not significantly reliant on third-party content because access to proprietary content was at the heart of online services' marketing

[30] Id. ("It is unclear, for instance, to what extent the gateway will be able to tell consumers where to go for the information they desire . . . . Each information service has its own commands for information retrieval."); Michael J. Himowitz, A look at on-line services CompuServe and Prodigy, The Baltimore Sun, Jan. 17, 1994 ("CompuServe [costs] $8.95 per month . . . . Effective Feb. 6, rates for forums and extended services . . . are an additional $4.80 per hour at 1200 or 2400 Baud, $9.60 per hour at 9600 or 14,400 Baud . . . . Prodigy: Most popular plan charges $14.95 per month . . . Additional Plus hours [for use of bulletin boards and stock market prices] are $3.60 each.").

[31] Pollack, supra note 29 ("Each information service has its own commands for information retrieval. With a useful gateway [which did not yet exist], the user would need to know only one set of commands and the gateway would translate them."); David Bernstein, Interoperability: The Key to Cloud Applications, https://e.huawei.com/en/publications/global/ict_insights/hw_376150/feature%20story/HW_376286 (last visited July 19, 2020) ("[T]he original online services such as AOL, Prodigy, and CompuServe had no interoperability between them. Content posted on one service could not be consumed by a client connected to a different service. Email could not be sent from a user on one service to a user on another.").

[32] Joanna Pearlstein, MacWorld's Guide to Online Services, MacWorld, Aug. 1994, at 90 ("Core services include general, business, and sports news; computer forums and news; reference materials; electronic mail and bulletin boards; business statistics and data; games; shopping services; travel services; and educational reference material. Still, the different online services do have different emphases, so even though they all offer a range of basic services, they are not interchangeable.").

efforts.[33] The online services of the late 1990s ran online bulletin boards as a minor sideline and used volunteer moderators from the computer hobbyist community.[34] Their business model was based on fees for connection time and professional database access, not community content.

One result of this model was that monitoring users and their content was a burden and regulatory imposition. Zeran, a leading and widely cited case on moderation, reflects this understanding of the technology of that time.[35] The Zeran court took the view, which most section 230 cases accept, that "liability [for third-party posts] upon notice [by an offended

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[33] James Coats, Getting on-line with cyberspace heavyweights, Chicago Tribune, Feb. 28, 1993 at C8 ("GEnie's greatest value to me is that it serves as a gateway to the ultraexpensive Dow Jones News/Retrieval service. Typing DOWJONES on GEnie gets me access to hundreds of thousands of newspaper articles - but at a cost well above $2 a minute. Still, when I'm involved in personal research, it empowers me with access to more than 100 different newspapers, wire services and magazines . . . . A costly service [on CompuServe] called IQUEST, for example, gets you access to thousands of newspapers, magazines, books and other research materials. A magazine database lets you search hundreds of thousands of back issues of publications from Playboy to Foreign Policy. The catch is that each article you decide to read in full costs $1.50 . . . . Tremendous amounts of information about stocks and investing can be had as well, for a price. You can follow favorite stocks by BasicQuotes and seek out news by company. Much of the famous Standard and Poor's research data can be had on CompuServe's S&P Online. Most company filings with the Securities and Exchange Commission can be downloaded on a service called Disclosure. I make heavy use of CompuServe's Executive News Service, which gives me an electronic 'clipping service' providing each day's news about dozens of firms I follow for my job, as well as other topics . . . . But Delphi takes the Internet much further than the other boards, which confine Internet traffic to electronic mail. With Delphi you can actually hook your home computer up with mainframes and minicomputers all around the world and read and download an almost unimaginably diverse wealth of files.").

[34] Catherine Buni & Soraya Chemaly, The Secret Rules of the Internet: the murky history of moderation, and how it's shaping the future of free speech, The Verge (April 13, 2016), https://www.theverge.com/2016/4/13/11387934/internet-moderator-history-youtube-facebook-reddit-censorship-free-speech (last visited July 19, 2020) ("Moderation's initially haphazard, laissez-faire culture has its roots here. Before companies understood how a lack of moderation could impede growth and degrade brands and community, moderators were volunteers; unpaid and virtually invisible. At AOL, moderation was managed by a Community Leader program composed of users who had previously moderated chat rooms and reported 'offensive' content. They were tasked with building 'communities' in exchange for having their subscription fees waived. By 2000, companies had begun to take a more proactive approach.").

[35] Zeran v. Am. Online, Inc., 129 F.3d 327 (4th Cir. 1997).

viewer] reinforces service providers' incentives to restrict speech and abstain from self-regulation."[36] The court went on to explain that online services cannot possibly take responsibility for third-party content due to its volume; as such, online services will simply prohibit all such content unless they are protected from liability for it. In the court's words:

> "If computer service providers were subject to distributor liability, they would face potential liability each time they receive notice of a potentially defamatory statement—from any party, concerning any message. Each notification would require a careful yet rapid investigation of the circumstances surrounding the posted information, a legal judgment concerning the information's defamatory character, and an on-the-spot editorial decision whether to risk liability by allowing the continued publication of that information. Although this might be feasible for the traditional print publisher, the sheer number of postings on interactive computer services would create an impossible burden in the Internet context."[37]

However, today's social media companies have adopted a different business model. Rather than provide database access, like Prodigy did, social media offers primarily third-party content.[38] Rather than charge fees, social media platforms profile users in order to categorize

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[36] Id. at 333.
[37] Id.
[38] Facebook Investor Relations, https://investor.fb.com/resources/default.aspx (last visited July 19, 2020) ("Founded in 2004, Facebook's mission is to give people the power to build community and bring the world closer together. People use Facebook to stay connected with friends and family, to discover what's going on in the world, and to share and express what matters to them."); Twitter Investor Relations, https://investor.twitterinc.com/contact/faq/default.aspx (last visited July 19, 2020) ("What is Twitter's mission statement? The mission we serve as Twitter, Inc. is to give everyone the power to create and share ideas and information instantly without barriers. Our business and revenue will always follow that mission in ways that improve – and do not detract from – a free and global conversation."); Google, Our Approach to Search, https://www.google.com/search/howsearchworks/mission/ (last visited July 19, 2020) ("Our company mission is to organize the world's information and make it universally accessible and useful."); YouTube Mission Statement, https://www.youtube.com/about/ (last visited July 19, 2020) ("Our mission is to give everyone a voice and show them the world. We believe that everyone deserves to have a voice, and that the world is a better place when we listen, share and build community through our stories."); Matt Buchanan, Instagram and the Impulse to Capture Every Moment, The New Yorker, June 20, 2013, https://www.newyorker.com/tech/annals-of-technology/instagram-and-the-impulse-to-capture-every-moment (last visited July 27, 2020)

them and connect them to advertisers and other parties interested in user information.[39] Online platforms like Twitter, Facebook, and YouTube have content moderation at the heart of their business models. Unlike the early internet platforms, they have invested immense resources into both professional manual moderation and automated content screening for promotion, demotion, monetization, and removal.[40]

("When I think about what Instagram is, I think about moments," said Kevin Systrom, the photo-sharing service's co-founder and C.E.O. "Our mission is to capture and share the world's moments.").

[39] Len Sherman, Why Facebook Will Never Change Its Business Model, Forbes.com, Apr, 16, 2018, https://www.forbes.com/sites/lensherman/2018/04/16/why-facebook-will-never-change-its-business-model/#7cdac11c64a7 (last visited July 27, 2020) ("By now, it's widely understood that Facebook's voracious appetite for user data is driven by their business model which charges advertisers for access to precisely targeted segments of their massive consumer database. No one knows more about more consumers than Facebook"); Twitter and Facebook have differing business models, The Economist, June 6, 2020, https://www.economist.com/business/2020/06/04/twitter-and-facebook-have-differing-business-models (last visited July 27, 2020) ("At first blush, Twitter and Facebook look similar. Each is a social network, connecting users online and presenting them with content in a 'feed', a never-ending list of posts, pictures and videos of pets. Each makes money by selling advertising, and thus has an interest in using every trick to attract users' attention. And each employs gobbets of data gleaned from users' behaviour to allow advertisers to hit targets precisely, for which they pay handsomely"); Enrique Dans, Google Vs. Facebook: Similar Business Models, But With Some Very Big Differences, Forbes.com, Feb. 2, 2019, https://www.forbes.com/sites/enriquedans/2019/02/02/google-vs-facebook-similar-business-models-but-with-some-very-big-differences/#6ab9408541ef (last visited July 27, 2020) ("Google does not sell my data or pass it on to any third party, it simply allows that third party to display an advertisement to a segment of its database that includes me, based on certain variables . . . . What is the result of Google knowing about us and our online interests? We receive ads that largely reflect those interests and we still have some control over what we see.").

[40] Zoe Thomas, Facebook content moderators paid to work from home, BBC.com, Mar. 18, 2020, https://www.bbc.com/news/technology-51954968 (last visited July 27, 2020) ("Facebook has approximately 15,000 content moderators in the US, who are hired by third-party contracting companies"); Elizabeth Dwoskin, et al., Content moderators at YouTube, Facebook and Twitter see the worst of the web — and suffer silently, Washington Post, July 25, 2019, https://www.washingtonpost.com/technology/2019/07/25/social-media-companies-are-outsourcing-their-dirty-work-philippines-generation-workers-is-paying-price/ (last visited July 27, 2020) ("In the last couple of years, social media companies have created tens of thousands of jobs around the world to vet and delete violent or offensive content . . . ."); Shannon Bond, Facebook, YouTube Warn Of More Mistakes As Machines Replace Moderators, National Public

Understanding how new entrants can or cannot participate in these intermediary markets is therefore key in understanding appropriate liability regimes; this is particularly important because liability shields can deter entrance. Market observers have significant concerns about barriers to entrance for new social media companies as well as social media's role with other edge providers in creating mediation markets. It is no secret that today's online platforms exist in highly concentrated markets.[41] Moreover, the relationship between social media and their adjacent markets is unclear, with mergers and other agreements having the potential for unexpected anticompetitive results.[42] Social media firms also demonstrate network effects and other barriers to entry, which frequently lead to weaker competition.[43] This lack of competition is particularly troubling given the decrease of new entrants documented in the broader economy.[44]

Section 230 was designed to assist the nascent internet industry. Pivotal judicial decisions, such as Zeran, interpreted ambiguous language in section 230 broadly, but at a time when different cost structures, business models, and markets prevailed. Given the rapidly

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Radio, March 31, 2020, https://www.npr.org/2020/03/31/820174744/facebook-youtube-warn-of-more-mistakes-as-machines-replace-moderators (last visited July 27, 2020) ("Facebook, YouTube and Twitter are relying more heavily on automated systems to flag content that violate their rules . . . . Tech companies have been saying for years that they want computers to take on more of the work of keeping misinformation, violence and other objectionable content off their platforms. Now the coronavirus outbreak is accelerating their use of algorithms rather than human reviewers.").

[41] Justin Haucap & Ulrich Heimeshoff, Google, Facebook, Amazon, eBay: Is the Internet driving competition or market monopolization? 11 Int. Econ. Policy 49–61 (2014).

[42] Carl Shapiro, Protecting Competition in the American Economy: Merger Control, Tech Titans, Labor Markets. 33(3) Journal of Economic Perspectives 69 (2019), available at http://faculty.haas.berkeley.edu/shapiro/protectingcompetition.pdf.

[43] Steven Berry, Martin Gaynor & Fiona Scott Morton, Do Increasing Markups Matter? Lessons from Empirical Industrial Organization, 33(3) Journal of Economic Perspectives 44 (2019).

[44] Germán Gutiérrez & Thomas Philippon, The Failure of Free Entry. NBER Working Paper No. 26001 (June 2019), available at https://www.nber.org/papers/w26001.pdf.

changing markets and relationship between market structure and optimal liability rules, NTIA urges the FCC to re-examine section 230 and work towards transparency in these markets.

V. The Authority and Need for Issuing Regulations for Section 230

This section sets forth the FCC's authority to issue regulations to interpret section 230 and shows how regulations are necessary to resolve the statute's ambiguities that the E.O. identified. This section further explains how the FCC has jurisdiction to issue regulations, outlines the background and history of section 230, explains its structure, and shows how courts have relied upon its ambiguities to make overly expansive interpretations.

Finally, it examines how the section's ambiguities should be resolved. Specifically, NTIA respectfully requests the FCC to:

- clarify the relationship between 230(c)(1) and (c)(2);
- explain the meaning of "good faith" and "otherwise objectionable" in section 230(c)(2);
- specify how the limitation on the meaning of "interactive computer service" found in section 230(f)(2) should be read into section 230(c)(1); and,
- explicate the meaning of "treated as a speaker or publisher" in section 230(c)(1).

A. The Commission's Power to Interpret Section 230 of the Communications Decency Act

Section 201(b) of the Communications Act (Act) empowers the Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out this chapter."[45] Under this authority, the FCC should promulgate rules to resolve ambiguities in Section 230. The Supreme Court has confirmed that "the grant in section 201(b) means what it

[45] 47 U.S.C. § 201(b).

says: The FCC has rulemaking authority to carry out the 'provisions of this Act.'" Section 230, in turn, was incorporated into the Act – in the same portion of the Act, Title II, as section 201(b) – by the Telecommunications Act of 1996 (1996 Act). The fact that section 230 was enacted after section 201(b) is of no consequence; the Supreme Court repeatedly has held that the Commission's section 201(b) rulemaking power extends to all subsequently enacted provisions of the Act, specifically identifying those added by the Telecommunications Act of 1996.[46] Thus, the Commission has authority under section 201(b) to initiate a rulemaking to implement section 230. That broad rulemaking authority includes the power to clarify the language of that provision, as requested in the petition.

The Commission has authority to implement section 230 through regulation even if this section was added to the 1934 Act through the amendments in the Telecommunications Act of 1996. It does not matter if the provision specifically mentions or contemplates FCC regulation. For instance, section 332(c)(7), which was also added to the Act by the 1996 Act, limits State and local decision-making on the placement, construction, or modification of certain wireless service facilities. The section makes no mention of FCC authority, only alluding to the Commission in passing and giving it no role in the provision's implementation. The Supreme Court nonetheless, upheld Commission's authority to issue regulations pursuant to section

[46] AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366, 378 (1999) ("We think that the grant in § 201(b) means what it says: The FCC has rulemaking authority to carry out the "provisions of this Act," which include §§ 251 and 252, added by the Telecommunications Act of 1996"); City of Arlington v. FCC, 668 F.3d 229, 250 (5th Cir. 2012), aff'd, 569 U.S. 290 (2013) ("Section 201(b) of that Act empowers the Federal Communications Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out [its] provisions. Of course, that rulemaking authority extends to the subsequently added portions of the Act.").

332(c)(7) for the simple reason that it was codified within the 1934 Act, and section 201(b) empowers the Commission to promulgate rules interpreting and implementing the entire Act.[47]

Similarly, in Iowa Utilities, the Supreme Court ruled that the FCC had rulemaking authority to implement sections 251 and 252 of the Act.[48] As with section 332, these sections did not explicitly grant the Commission power over all aspects of their implementation, arguably excluding intrastate and other areas. Nonetheless, the Court ruled that "§ 201(b) explicitly gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies."[49] These two decisions, and their underlying rationales, compel the same result for a Commission rulemaking to interpret section 230, and the rationale is simple and inarguable: if Congress chooses to codify a section into the 1934 Communications Act, then section 201(b) gives the FCC the power to clarify and implement it through regulation.

Neither section 230's text, nor any speck of legislative history, suggests any congressional intent to preclude the Commission's implementation. This silence further underscores the presumption that the Commission has power to issue regulations under section 230. As the Fifth Circuit noted with respect to section 332(c)(7), "surely Congress recognized that it was legislating against the background of the Communications Act's general grant of rulemaking authority to the FCC." [50] Accordingly, if Congress wished to exclude the Commission from the interpretation of section 230, "one would expect it to have done so explicitly." Congress did not do so and, as was the case for section 332(c)(7), that decision

[47] City of Arlington, 569 U.S. at 293 ("Of course, that rulemaking authority [of section 201(b)] extends to the subsequently added portions of the Act").
[48] Iowa Util. Bd., 525 U.S. at 378-87.
[49] Iowa Util. Bd., 525 U.S. at 380.
[50] Arlington, 668 F.3d at 250.

opens an ambiguity in section 230 that the Commission may fill pursuant to its section 201(b) rulemaking authority.

B. Background to Section 230

Section 230 reflects a congressional response to a New York state case, Stratton Oakmont, Inc. v. Prodigy Servs. Co., decided in 1995.[51] In Stratton Oakmont, a New York trial court reasoned that Prodigy had become a "publisher" under defamation law because it voluntarily deleted some messages from its message boards "on the basis of offensiveness and 'bad taste,'" and was liable for the acts of its agent, the "Board Leader" of the message board, who it had hired to monitor postings on its bulletin board. The court held that Prodigy, having undertaken an affirmative duty to remove content, therefore was legally responsible for failing to remove an allegedly defamatory posting.[52] The U.S. Court of Appeals for the Ninth Circuit explained that: "[t]he Stratton Oakmont court concluded that when a platform engages in content

[51] Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC, 521 F.3d 1157, 1163 (9th Cir. 2008) ("Section 230 was prompted by a state court case holding Prodigy responsible for a libelous message posted on one of its financial message boards"); Barnes v. Yahoo!, Inc., 570 F.3d 1096, 1101 (9th Cir. 2009) ("This is not surprising, because, as we and some of our sister circuits have recognized, Congress enacted the Amendment in part to respond to a New York state court decision, Stratton Oakmont, [citations omitted,] which held that an internet service provider could be liable for defamation."); Barrett v. Rosenthal, 40 Cal. 4th 33, 44, 146 P.3d 510, 516 (2006) ("The legislative history indicates that section 230 was enacted in response to an unreported New York trial court case."); Sen. Rep. No. 104-230, 2d. Session at 194 (1996) ("One of the specific purposes of [section 230] is to overrule Stratton Oakmont v. Prodigy and any other similar decisions"); see also H.R. Conf. Rep. No. 104-458, at 208 ("The conferees believe that [decisions like Stratton Oakmont] create serious obstacles to the important federal policy of empowering parents to determine the content of communications their children receive through interactive computer services"); 141 Congressional Record H8469–H8470 (daily ed., June 14, 1995) (statement of Rep. Cox, referring to disincentives created by the Stratton Oakmont decision); Blumenthal v. Drudge, 992 F. Supp. 44, 52 n.13 (D.D.C. 1998) ("the legislative history makes clear that one of the primary purposes of Section 230 was to overrule the Stratton Oakmont decision").

[52] Stratton Oakmont, 1995 WL 323720 at *4.

moderation, or 'some voluntary self-policing,' the platform becomes 'akin to a newspaper publisher, and thus responsible for messages on its bulletin board that defamed third parties.'"[53]

Stratton Oakmont applied established tort law, which makes "publishers" liable for defamatory material.[54] Traditionally, tort law defines "publication" as simply the "communication intentionally or by a negligent act to one other than the person defamed."[55] But because the publication element of a defamation claim can also be satisfied when someone unreasonably fails to remove a communication exhibited via means in his possession or control, the Stratton Oakmont court concluded that Prodigy's content moderation or "voluntary self-policing" of the bulletin board rendered Prodigy a publisher of a defamatory statement on its board. Therefore, Prodigy was liable as a publisher.[56]

Stratton Oakmont distinguishes an earlier case, Cubby, Inc. v. CompuServe, Inc.,[57] which ruled an internet bulletin board was not the publisher of material on its bulletin board. The key distinguishing factor was that in Cubby, CompuServe did not moderate postings. The court ruled that CompuServe was not a publisher, but rather what tort law terms a "distributor," i.e., one "who merely transmit[s] defamatory content, such as news dealers, video rental outlets,

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[53] Fair Hous. Council, 521 F.3d at 1163.
[54] Barnes, 570 F.3d at 1104, citing W. Page Keeton, et al., Prosser and Keeton on the Law of Torts § 113, at 799 (5th ed. 1984) ("[E]veryone who takes part in the publication, as in the case of the owner, editor, printer, vendor, or even carrier of a newspaper is charged with publication."); see also Cianci v. New Times Publ'g Co., 639 F.2d 54, 60–61 (2d Cir.1980) (noting the "black-letter rule that one who republishes a libel is subject to liability just as if he had published it originally").
[55] Restatement (Second) of Torts § 577.
[56] Stratton Oakmont, 1995 WL 323710 at *5 ("PRODIGY's conscious choice, to gain the benefits of editorial control, has opened it up to a greater liability than CompuServe and other computer networks that make no such choice."); Barnes, 570 F.3d at 1102 ("publication involves reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content"); see Rodney A. Smolla, Law of Defamation § 4:77 (2d ed., 1999).
[57] Cubby, 776 F.Supp. 135.

bookstores, libraries, and other distributors and vendors."[58] "Distributors" are subject to liability "if, but only if, they know or have reason to know of the content's defamatory character."[59] Thus, publishers had strict liability for materials they published, whereas distributors only had liability for publishing defamation with actual or constructive knowledge of its defamatory character.[60] The Stratton Oakmont court reasoned that, in Cubby, CompuServe "had no opportunity to review the contents of the publication at issue before it was uploaded into CompuServe's computer banks," and, therefore, CompuServe had no liability for defamatory posts on platforms that it owned and controlled as distributor.[61]

While following established common law tort rules, the Stratton Oakmont and Cubby cases presented internet platforms with a difficult choice: voluntarily moderate unlawful or obscene content and thereby become liable for all messages on their bulletin boards, or do nothing and allow unlawful and obscene content to cover their bulletin boards unfiltered. In litigation, Prodigy claimed that the "sheer volume" of message board postings it received—by our current standards a humble "60,000 a day"—made manually reviewing every message impossible. If forced to choose between taking responsibility for all messages and deleting no messages at all, it would take the latter course.[62] Thus, given the technological differences between an internet platform and a bookstore or library, the former's ability to aggregate a much greater volume of information, traditional liability rules became strained. Tort law risked dis-incentivizing platforms from editing or moderating any content for fear they would become liable for all third-party content.

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[58] Smolla § 4:92.
[59] Restatement (Second) of Torts § 581(1) (1977).
[60] Prosser, supra note 54, § 113 at 803.
[61] Stratton Oakmont, 1995 WL 323710 at *2-3.
[62] Stratton Oakmont, 1995 WL 323710 at *3.

Congress intended section 230 to address this difficult liability problem, but nothing in the law's history, purpose or text allows for the conclusion that internet platforms should avoid all responsibility for their own editing and content-moderating decisions. Indeed, section 230 was originally titled the "Online Family Empowerment" amendment to the Communications Decency Act, which was titled, "protection for private blocking and screening of offensive material." [63] Responding to pornography and obscene material on the web, Congress designed section 230 to encourage platforms to moderate specific types of content, mostly related to sexual material inappropriate to minors. Congress did not intend a vehicle to absolve internet and social media platforms—which, in the age of dial-up internet bulletin boards, such as Prodigy, did not exist—from all liability for their editorial decisions.

Representatives Christopher Cox and Ron Wyden floated the bill that became section 230 as an alternative to Senator J. James Exon's bill that criminalized the transmission of indecent material to minors.[64] In public comments, Representative Cox explained that the section 230 would reverse Stratton Oakmont and advance the regulatory goal of allowing families greater power to control online content.[65] The final statute reflected his stated policy: "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

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[63] Telecommunications Act of 1996, Pub. L. No. 104-104, title V, Sec. 509 (1996).
[64] Robert Cannon, The Legislative History of Senator Exon's Communications Decency Act: Regulating Barbarians on the Information Superhighway, 49 Fed. Comm. L.J. 51 (1996); Felix T. Wu, Collateral Censorship and the Limits of Intermediary Immunity, 87 Notre Dame L. Rev. 293, 316 (2011); 141 Cong. Rec. H8468-69 (daily ed. Aug. 4, 1995); Ashcroft v. Am. Civil Liberties Union, 535 U.S. 564, 564 (2002) ("[T]he Communications Decency Act reflected Congress's response to the proliferation of pornographic, violent and indecent content on the web Congress' first attempt to protect children from exposure to pornographic material on the Internet.").
[65] See 141 Cong. Rec. H8469-70 (daily ed. Aug. 4, 1995) (statement of Rep. Cox).

services."[66] The comments in the Congressional record from supporting congressmen and women—and it received strong bi-partisan support—reveal an understanding that the Online Family Empowerment amendment, now codified as section 230, as a non-regulatory approach to protecting children from pornography,[67] intended to provide incentives for "Good Samaritan" blocking and screening of offensive material.

C. Section 230(c)'s Structure

To further these goals, Congress drafted the "Good Samaritan" exception to publisher liability. Section 230(c)(1) has a specific focus: it prohibits "treating" "interactive computer services," i.e., internet platforms, such as Twitter or Facebook, as "publishers." But, this provision only concerns "information" provided by third parties, i.e., "another internet content provider"[68] and does not cover a platform's own content or editorial decisions.

The text of section 230(c)(1) states:

(c) Protection for "Good Samaritan" blocking and screening of offensive material:

(1) Treatment of publisher or speaker

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[66] 47 U.S.C. § 230(b)(3).

[67] See 141 Cong. Rec. H8470 (1995) (statement of Rep. White) ("I want to be sure we can protect [children] from the wrong influences on the Internet. But . . . the last person I want making that decision is the Federal Government. In my district right now there are people developing technology that will allow a parent to sit down and program the Internet to provide just the kind of materials that they want their child to see. That is where this responsibility should be, in the hands of the parent. That is why I was proud to cosponsor this bill that is what this bill does . . . ."); id., (statement of Rep. Lofgren) ("[The Senate approach] will not work. It is a misunderstanding of the technology. The private sector is out giving parents the tools that they have. I am so excited that there is more coming on. I very much endorse the Cox-Wyden amendment . . . .").

[68] 47 U.S.C. § 230(c)(1).

> No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

Section (c)(2) also has a specific focus: it eliminates liability for interactive computer services that act 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."[69]

Subsection (c)(2) governs the degree to which some of the platform's own content moderation decisions receive any legal protection, stating:

> "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 . . . ."

Here, Congress protects "any action . . . taken in good faith to restrict access to or availability of material." This means any social media platform's editorial judgment, moderation, content editing or deletion receives legal immunity, but the plain words of the provision indicate that this protection only covers decisions to restrict access to certain types of enumerated content. As discussed infra, these categories are quite limited and refer primarily to traditional areas of media regulation—also consistent with legislative history's concern that private regulation could create family-friendly internet spaces—and only actions within these categories taken in "good faith."

[69] 47 U.S.C. § 230(c)(2).

D. Expansive Court Rulings Tied to Early Platforms and Outdated Technology

Courts have recognized that "Congress enacted this provision for two basic policy reasons: to promote the free exchange of information and ideas over the Internet and to encourage voluntary monitoring for offensive or obscene material."[70] Congress intended sections 230(c)(1) and (c)(2) to protect platform openness and monitoring for certain specific issues. But, as discussed infra, ambiguous language in these statutes allowed some courts to broadly expand section 230's immunity from beyond its original purpose into a bar any legal action or claim that involves even tangentially "editorial judgment."[71] These subsequent protections established from "speaker or publisher" are overly broad and expansive, and often have absolutely nothing to do with the original harm section 230 was meant to remedy: relieving platforms of the burden of reading millions of messages to detect for defamation as Stratton Oakmont would require. Far and above initially intended viewer protection, courts have ruled section 230(c)(1) offers immunity from contracts,[72] consumer fraud,[73] revenge pornography,[74]

[70] Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1122 (9th Cir. 2003).
[71] See, e.g., Sikhs for Justice "SFJ", Inc. v. Facebook, Inc., 144 F.Supp.3d 1088, 1094–1095 (N.D.Cal. 2015).
[72] Caraccioli v. Facebook, Inc., 167 F. Supp.3d 1056, 1064-66 (N.D. Cal. 2016) (dismissing breach of contract claim and Cal. Bus. & Prof. Code § 17200 unfair practices claim); Lancaster v. Alphabet Inc., No. 2016 WL 3648608, at *5 (N.D. Cal. July 8, 2016) (dismissing claim for breach of covenant of good faith and fair dealing); Jurin v. Google, Inc., 695 F. Supp. 2d 1117, 1122–23 (E.D. Cal. 2010) (dismissing claim for fraud); Fed. Agency of News LLC, et al. v. Facebook, Inc., 395 F. Supp. 3d 1295 (N.D. Cal. 2019) (dismissing discrimination claims under Title II and 42 U.S.C. § 1983); Obado v. Magedson, 43 Media L. Rep. 1737 (D.N.J. 2014) (dismissing claim for promissory estoppel), aff'd, 612 F. App'x 90 (3d Cir. 2015).
[73] See Gentry v. eBay, Inc., 121 Cal. Rptr. 2d 703 (Cal. Ct. App. 2002); Hinton v. Amazon, 72 F. Supp. 3d 685, 687 (S. D. Miss. 2014); Oberdorf v. Amazon, 295 F. Supp. 3d 496 (Mid. D. PA Dec. 21, 2017).
[74] Jones v. Dirty World Entertainment Holding LLC, 755 F.3d 398 (6th Cir. 2014); S.C. v. Dirty World LLC, 40 Media L. Rep. 2043 (W.D. Mo. 2012); Poole v. Tumblr, Inc., 404 F. Supp. 3d 637 (D. Conn. 2019).

anti-discrimination civil rights obligations,[75] and even assisting in terrorism.[76] By expanding protections beyond defamation, these courts extend to platforms a privilege to ignore laws that every other communications medium and business must follow and that are no more costly or difficult for internet platforms to follow than any other business.

The problem of overly expansive interpretations for section 230 is not merely hypothetical. Tens of thousands of Americans have reported, among other troubling behaviors, online platforms "flagging" content as inappropriate, even though it does not violate any stated terms of service; making unannounced and unexplained changes to company policies that have the effect of disfavoring certain viewpoints; and deleting content and entire accounts with no warning, no rationale, and no recourse. As FCC Commissioner Brendan Carr has observed, social media such as Twitter "punis[h] speakers based on whether it approves or disapproves of their politics."[77] One can hardly imagine a result more contrary to Congress's intent to preserve on the internet "a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity."[78]

Further, by making contract and consumer fraud claims concerning moderation unenforceable under section 230, courts seriously injure section 230's goal "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services."[79] Content moderation policies become, as FCC Commissioner Brendan

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[75] Sikhs for Justice "SFJ", Inc., 144 F. Supp.3d 1088, 1094-1095.
[76] Force, 934 F.3d at 57.
[77] Jon Brokin, Arstechnica, FCC Republican excitedly endorses Trump's crackdown on social media, May 29, 2020, https://arstechnica.com/tech-policy/2020/05/fcc-republican-excitedly-endorses-trumps-crackdown-on-social-media/.
[78] 47 U.S.C. § 230(a)(1).
[79] 47 U.S.C. § 230(b)(2).

Carr recently described Twitter's moderation policy, "free speech for me, but not for thee." [80] Further, if interactive computer services' contractual representations about their own services cannot be enforced, interactive computer services cannot distinguish themselves. Consumers will not believe, nor should they believe, representations about online services. Thus, no service can credibly claim to offer different services, further strengthening entry barriers and exacerbating competition concerns.

Much of this overly expansive reading of section 230 rests on a selective focus on certain language from Zeran, a case from the United States of Appeals for the Fourth Circuit.[81] The line of court decisions expanding section 230 in such extravagant ways relies on Zeran's reference to: "lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred."[82] This language arguably provides full and complete immunity to the platforms for their own publications, editorial decisions, content-moderating, and affixing of warning or fact-checking statements.[83] But, it is an erroneous interpretation, plucked from its surrounding context and thus removed from its more accurate meaning.

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[80] News Break, Brendan Carr Decries Twitter Censorship as 'Free Speech for Me, but Not for Thee, June 11, 2020, https://www.newsbreak.com/news/1582183608723/brendan-carr-decries-twitter-censorship-as-free-speech-for-me-but-not-for-thee.

[81] Zeran, 129 F.3d at 327.

[82] Zeran, 129 F.3d at 330.

[83] These lines from Zeran have led some courts to adopt the so-called three part section 230(c)(1) test: (1) whether Defendant is a provider of an interactive computer service; (2) if the postings at issue are information provided by another information content provider; and (3) whether Plaintiff's claims seek to treat Defendant as a publisher or speaker of third party content. Okeke v. Cars.com, 966 N.Y.S.2d 843, 846 (Civ. Ct. 2013), citing Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 564 F. Supp. 2d 544, 548 (E.D. Va. 2008), aff'd, 591 F.3d 250 (4th Cir. 2009). As the text explains, this so-called test errs in the third prong. The question is not whether the claim treats defendant as a publisher or speaker—after all, virtually every legal claim (contract, fraud, civil rights violations) would do so. The question is whether liability is

In fact, the quotation refers to third party's exercise of traditional editorial function—not those of the platforms. As the sentence in Zeran that is immediately prior shows, section 230 "creates a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service." In other words, the liability from which section 230(c)(1) protects platforms is that arising from the content that the third-party posts—i.e. the "information" posted by "another information provider" and those information providers' editorial judgments.

In light of the history of publisher and distributor liability law upon which section 230 draws, as well as its actual text, the best way to interpret the distinction between section 230(c)(1) and (c)(2) is as follows: Section 230(c)(1) applies to acts of omission—to a platform's failure to remove certain content. In contrast, section 230(c)(2) applies to acts of commission—a platform's decisions to remove. Section 230(c)(1) does not give complete immunity to all a platform's "editorial judgments."

E. Need for FCC Regulations: Ambiguities in Section 230

Section 230 contains a number of ambiguities that courts have interpreted broadly in ways that are harmful to American consumers, free speech, and the original objective of the statute. First, as discussed below, uncertainty about the interplay between section 230(c)(1) and (c)(2) has led many courts to a construction of the two provisions that other courts consider to be anomalous or lead to rendering section 230(c)(2) superfluous. Second, the interplay between section 230(c)(1) and (c)(2) does not make clear at what point a platform's moderation and presentation of content becomes so pervasive that it becomes an information content provider

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based on the content of third-party information. Requiring platforms to monitor the content of thousands of posts was the impetus behind section 230.

and, therefore, outside of section 230(c)(1)'s protections. Third, critical phrases in section 230(c)(2)— the "otherwise objectionable" material that interactive computer service providers may block without civil liability; and the "good faith" precondition for activating that immunity—are ambiguous on their face. And, with respect to the former, courts have posited starkly divergent interpretations that can only create uncertainty for consumers and market participants. Finally, what it means to be an "information content provider" or to be "treated as a publisher or speaker" is not clear in light of today's new technology and business practices. The Commission's expertise makes it well equipped to address and remedy section 230's ambiguities and provider greater clarity for courts, platforms, and users.

1. The Interaction Between Subparagraphs (c)(1) and (c)(2)

Ambiguity in the relationship between subparagraphs (c)(1) and (c)(2) has resulted in courts reading section 230(c)(1) in an expansive way that risks rendering (c)(2) a nullity. Numerous district court cases have held that section 230(c)(1) applies to removals of content, not section 230(b)(2) with its exacting "good faith" standard."[84] For instance, in Domen v. Vimeo, a federal district court upheld the removal of videos posted by a religious groups' questioning a California law's prohibition on so-called sexual orientation change efforts (SOCE), and the law's effect on pastoral counseling. Finding the videos were "harassing," the court upheld their removal under both section 230(c)(1) and section (c)(2), ruling that these sections are co-extensive, rather than aimed at very different issues.[85] In doing so, the court rendered section

[84] Domen v. Vimeo, Inc., 433 F. Supp. 3d 592, 601 (S.D.N.Y. 2020); Lancaster v. Alphabet, Inc., 2016 WL 3648608 (N.D. Cal. July 28, 2016); Sikhs for Justice "SFJ", Inc., 144 F.Supp.3d 1088.
[85] Domen, 433 F. Supp. 3d at 601 ("the Court finds that Vimeo is entitled to immunity under either (c)(1) or (c)(2)").

230(c)(2) superfluous—reading its regulation of content removal as completely covered by section 230(c)(1)'s regulation of liability for user-generated third party content.

The Commission should promulgate a regulation to clarify the relationship between the two provisions so that section 230(c)(1) does not render section 230(c)(1) superfluous. To determine how these subparagraphs interact—or as E.O. 13925 specifically instructs: "to clarify and determine the circumstances under which a provider of an interactive computer service that restricts access to content in a manner not specifically protected by subparagraph (c)(2)(A) may also not be able to claim protection under subparagraph (c)(1),"[86] the FCC should determine whether the two subsections' scope is additive or not. While some courts have read section 230(c)(1) "broadly,"[87] few have provided any principled distinction between the two subsections.

NTIA urges the FCC to follow the canon against surplusage in any proposed rule.[88] Explaining this canon, the Supreme Court holds, "[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . . ."[89] The Court emphasizes that the canon "is strongest when an interpretation would render superfluous another part of the same statutory scheme."[90]

While some district courts, such as Domen discussed above, have ruled that section 230(c)(1) applies to content removal, which is section 230(c)(2)'s proper domain, those courts

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[86] E.O. 13925 § 2(b)(i).
[87] See Force, 934 F.3d at 64.
[88] Marx v. General Revenue Corp., 568 U.S. 371, 385 (2013).
[89] Corley v. United States, 556 U.S. 303, 314 (2009), quoting Hibbs v. Winn, 542 U.S. 88, 101 (2004).
[90] Marx, 568 U.S. at 386; see also Fair Hous. Council, 521 F.3d 1157 at 1167-68 (avoiding superfluity in interpret the "developer" exception in Section 230(f)(3) of the CDA).

that have explicitly inquired into the proper relationship between the two subparagraphs have followed the surplusage canon—ruling that the provisions cover separate issues[91] and "address different concerns."[92] "Section 230(c)(1) is concerned with liability arising from information provided online," while "[s]ection 230(c)(2) is directed at actions taken by Internet service providers or users to restrict access to online information."[93] Thus, "[s]ection 230(c)(1) provides immunity from claims by those offended by an online publication, while section 230(c)(2) protects against claims by those who might object to the restriction of access to an online publication."[94] Courts have refused to "interpret[] the CDA . . . [to allow] the general immunity in (c)(1) [to] swallow[] the more specific immunity in (c)(2)" because subsection (c)(2) immunizes only an interactive computer service's "actions taken in good faith."[95]

NTIA suggests that the FCC can clarify this relationship between section 230(c)(1) and section 230(c)(2) by establishing the following points. First, the FCC should make clear that section 230(c)(1) applies to liability directly stemming from the information provided by third-party users. Section 230(c)(1) does not immunize a platforms' own speech, its own editorial decisions or comments, or its decisions to restrict access to content or its bar user from a platform. Second, section 230(c)(2) covers decisions to restrict content or remove users.

NTIA, therefore, requests that the Federal Communications Commission add the below Subpart E to 47 CFR Chapter I:

> **Subpart E. Interpreting Subsection 230(c)(1) and Its Interaction With Subsection 230(c)(2).**

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[91] See, e.g., Zango, 568 F.3d at 1175 (holding that (c)(2) is a "different . . . statutory provision with a different aim" than (c)(1)).
[92] Barrett, 40 Cal. 4th 33.
[93] Id. at 49 (emphasis added).
[94] Id. (emphasis added).
[95] e-ventures Worldwide, LLC v. Google, Inc., (M.D. Fla. Feb. 8, 2017) 2017 U.S. Dist. LEXIS 88650, at *9.

§ 130.01
As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

(a) 47 U.S.C. 230(c)(1) applies to an interactive computer service for claims arising from failure to remove information provided by another information content provider. Section 230(c)(1) has no application to any interactive computer service's decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service. Any applicable immunity for matters described in the immediately preceding sentence shall be provided solely by 47 U.S.C. § 230(c)(2).

(b) An interactive computer service is not a publisher or speaker of information provided by another information content provider solely on account of actions voluntarily taken in good faith to restrict access to or availability of specific material in accordance with subsection (c)(2)(A) or consistent with its terms of service or use.

2. The Meaning of Section 230(c)(2)

Section 230(c)(2)'s ambiguities include (1) how to interpret "otherwise objectionable" and (2) "good faith."

a. "Otherwise objectionable"

If "otherwise objectionable" means any material that any platform "considers" objectionable, then section 230(b)(2) offers de facto immunity to all decisions to censor content. And some district courts have so construed section 230(c)(2).[96] But, many courts recognize

[96] Domen v. Vimeo, Inc., 2020 U.S. Dist. L 7935 (S.D.N.Y. Jan. 15, 2020), appeal filed No 20-616 (Feb. 18, 2020) ("Section 230(c)(2) is focused upon the provider's subjective intent of what is 'obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable.' That section 'does not require that the material actually be objectionable; rather, it affords protection for blocking material "that the provider or user considers to be' objectionable."'); Langdon v. Google, Inc., 474 F. Supp. 2d 622, 631 (D. Del. 2007) ("Plaintiff argues there was no refusal to run his ads on the basis they were obscene or harassing, and that Defendants cannot create 'purported reasons for not running his ads.' He omits, however, reference to that portion of § 230 which provides immunity from suit for restricting material that is 'otherwise objectionable.'").

limiting principles. Many look to the statutory canon of ejusdem generis, which holds that catch-all phases at the end of a statutory lists should be construed in light of the other phrases.[97] In this light, section 230(c)(2) only applies to obscene, violent, or other disturbing matters.[98]

Understanding how the section 230(c)(2) litany of terms has proved difficult for courts in determining how spam filtering and filtering for various types of malware fits into the statutory framework. Most courts have ruled that "restrict[ing] access" to spam falls within the section

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[97] Washington State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler, 537 U.S. 371, 372 (2003) ("under the established interpretative canons of noscitur a sociis and ejusdem generis, where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar to those enumerated by the specific words").

[98] Darnaa, LLC v. Google, Inc., 2016 WL 6540452 at *8 (N.D. Cal. 2016) ("The context of § 230(c)(2) appears to limit the term to that which the provider or user considers sexually offensive, violent, or harassing in content."); Song Fi, Inc. v. Google, Inc., 108 F. Supp. 3d 876, 883 (N.D. Cal. 2015) ("First, when a statute provides a list of examples followed by a catchall term (or 'residual clause') like 'otherwise objectionable,' the preceding list provides a clue as to what the drafters intended the catchall provision to mean," citing Circuit City Stores v. Adams, 532 U.S. 105, 115 (2001)). This is the rationale for the canon of construction known as eiusdem generis (often misspelled ejusdem generis), which is Latin for 'of the same kind); National Numismatic v. eBay, 2008 U.S. Dist. LEXIS 109793, at *25 (M.D. Fla. Jul. 8, 2008) ("Section 230 is captioned 'Protection for 'Good Samaritan' blocking and screening of offensive material,' yet another indication that Congress was focused on potentially offensive materials, not simply any materials undesirable to a content provider or user"); Sherman v. Yahoo! Inc., 997 F. Supp. 2d 1129 (S.D. Cal. 2014) (text messages allegedly violate Telephone Consumer Protection Act; Yahoo! raised section 230(c)(2)(B) as a defense) ("The Court declines to broadly interpret 'otherwise objectionable' material to include any or all information or content. The Ninth Circuit has expressed caution at adopting an expansive interpretation of this provision where providers of blocking software 'might abuse th[e CDA] immunity to block content for anticompetitive purposes or merely at its malicious whim, under the cover of considering such material "otherwise objectionable" under § 230(c)(2)."); Goddard v. Google, Inc., 2008 U.S. Dist. LEXIS 101890 (N.D. Cal. Dec. 17, 2008) ('[i]t is difficult to accept . . . that Congress intended the general term "objectionable" to encompass an auction of potentially-counterfeit coins when the word is preceded by seven other words that describe pornography, graphic violence, obscenity, and harassment.' In the instant case, the relevant portions of Google's Content Policy require that MSSPs provide pricing and cancellation information regarding their services. These requirements relate to business norms of fair play and transparency and are beyond the scope of § 230(c)(2).").

230(c)(2) framework, although that is difficult perhaps to see as a textual matter.[99] Spam, though irritating and destructive of the online experience, does not fit clearly into the litany in section 230, at least as courts have understood this litany.

The spam cases have prompted courts to examine the thread that runs through the list in section 230. A recent Ninth Circuit case perceptively sees the challenge: On one hand, "decisions recognizing limitations in the scope of immunity [are] persuasive,"[100] and "interpreting the statute to give providers unbridled discretion to block online content would . . . enable and potentially motivate internet-service providers to act for their own, and not the public, benefit."[101] In addition, the court did recognize that "the specific categories listed in § 230(c)(2) vary greatly: [m]aterial that is lewd or lascivious is not necessarily similar to material that is violent, or material that is harassing. If the enumerated categories are not similar, they provide little or no assistance in interpreting the more general category. We have previously recognized this concept."[102]

Yet, in fact, the original purpose of the Communications Decency Act—"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

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[99] Asurvio LP v. Malwarebytes Inc., 2020 U.S. Dist. LEXIS 53906 (N.D. Cal. Mar. 26, 2020) (allegation that M is wrongfully classifying A's software as malware); 4PC Drivers Headquarters, LP v. Malwarebytes Inc., 371 F. Supp. 3d 652 (N.D. Cal. 2019) (malware); Shulman v. FACEBOOK.com, 2018 U.S. Dist. LEXIS 113076 (D.D.C. Jul. 9, 2018) (spam); Holomaxx Technologies v. Microsoft Corp., 783 F. Supp. 2d 1097 (N.D. Cal. 2011) (spam); Smith v. Trusted Universal Stds. in Elec. Transactions, Inc., 2010 U.S. Dist. LEXIS 43360 (D. N.J. May 4, 2010) (deletion of spam); e360insight v. Comcast Corp., 546 F. Supp. 2d 605 (N.D. Ill. 2008) (spam); Zango v. Kapersky Lab., 568 F.3d 1169 (9th Cir. 2009) (competitive blocking software).

[100] Enigma Software Grp. USA, v. Malwarebytes, Inc., 946 F.3d 1040, 1050 (9th Cir. 2019).

[101] Id.

[102] Id. at 1051.

material"[103]—suggests that the thread that combines section 230(c)(2)'s concepts are those materials that were objectionable in 1996 and for which there was already regulation—regulation which Congress intended section 230 to provide incentives for free markets to emulate.

The first four adjectives in subsection (c)(2), "obscene, lewd, lascivious, filthy," are found in the Comstock Act as amended in 1909.[104] The Comstock Act prohibited the mailing of "every obscene, lewd, or lascivious, and every filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character."[105] In addition, the CDA used the terms "obscene or indecent," prohibiting the transmission of "obscene or indecent message."[106] The Act's second provision declared unconstitutional in Reno v. ACLU, section 223(d), prohibits the knowing sending or displaying of "any comment, request, suggestion, proposal, image, or other communication that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs, regardless of whether the user of such service placed the call or initiated the communication."[107] This language of "patently offensive . . ." derives from the definition of indecent speech set forth in the Pacifica decision and which the FCC continues to regulate to this day.[108]

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[103] 47 U.S.C. § 230(a)(4).
[104] Section 3893 of the Revised Statutes made by section 211 of the Criminal Code, Act of March 4, 1909, c. 321, 35 Stat. 1088, 1129; United States v. Limehouse, 285 U.S. 424, 425 (1932) (stating that "Section 211 of the Criminal Code (18 USCA § 334) declares unmailable 'every obscene, lewd, or lascivious, and every filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character") (additional citation added). The phrase is repeated in numerous state statutes.
[105] Id. at 424-6.
[106] 47 U.S. § 223(a) (May 1996 Supp.).
[107] 521 U.S. 844 (1997).
[108] FCC v. Pacifica Found., 438 U.S. 726, 732 (1978) ("patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs").

The next two terms in the list "excessively violent" and "harassing" also refer to typical concerns of communications regulation which were, in fact, stated concerns of the CDA itself. Congress and the FCC have long been concerned about the effect of violent television shows, particularly upon children; indeed, concern about violence in media was an impetus of the passage of the Telecommunications Act of 1996, of which the CDA is a part. Section 551 of the Act, entitled Parental Choice in Television Programming, requires televisions over a certain size to contain a device, later known at the V-chip. This device allows viewers to block programming according to an established rating system.[109] The legislation led to ratings for broadcast television that consisted of violent programming.[110] The FCC then used this authority to require televisions to allow blocking technology.[111]

And, of course, Congress and the FCC have long regulated harassing wire communications. Section 223, Title 47, the provision which the CDA amended and into which the CDA was in part codified, is a statute that prohibits the making of "obscene or harassing"

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[109] 47 U.S.C. § 303(x). See Technology Requirements to Enable Blocking of Video Programming Based on Program Ratings, 63 Fed. Reg. 20, 131 (Apr. 23, 1998) ("[T]he Commission is amending the rules to require . . . technological features to allow parents to block the display of violent , sexual, or other programming they believe is harmful to their children. These features are commonly referred to as 'v-chip' technology."). Finding that "[t]here is a compelling governmental interest in empowering parents to limit the negative influences of video programming that is harmful to children," Congress sought to "provid[e] parents with timely information about the nature of upcoming video programming and with the technological tools" to block undesirable programming by passing the Telecommunications Act of 1996 (the "Telecommunications Act").

[110] FCC News, Commission Finds Industry Video Programming Rating System Acceptable, Report No. GN 98-3 (Mar. 12, 1998), available at https://transition.fcc.gov/Bureaus/Cable/News_Releases/1998/nrcb8003.html.

[111] Amy Fitzgerald Ryan, Don't Touch That V-Chip: A Constitutional Defense of the Television Program Rating Provisions of the Telecommunications Act of 1996, 87 Geo. L.J. 823, 825 (1999), citing Lawrie Mifflin, TV Networks Plan Ratings System, Orange County Reg., Feb. 15, 1996, at A1.

telecommunications.[112] These harassing calls include "mak[ing] or caus[ing] the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number" or "mak[ing] repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication."[113] Roughly half of the States also outlaw "harassing" wire communications via telephone.[114] Congress enacted the Telephone Consumer Protection Act (TCPA), recently upheld in most part by the Supreme Court,[115] to ban "automated or prerecorded telephone calls, regardless of the content or the initiator of the message," that are considered "to be a nuisance and an invasion of privacy."[116]

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[112] 47 U.S.C. § 223.

[113] 47 U.S.C. § 223(a)(1)(D) & (E) (2012).

[114] See, e.g., (Arizona) Ariz. Rev. Stat. § 13-2916 ("It is unlawful for any person, with intent to terrify, intimidate, threaten or harass a specific person or persons, to do any of the following: 3. Otherwise disturb by repeated anonymous, unwanted or unsolicited electronic communications the peace, quiet or right of privacy of the person at the place where the communications were received."); (California) Cal. Pen. Code § 653m(b) ("Every person who, with intent to annoy or harass, makes repeated telephone calls or makes repeated contact by means of an electronic communication device, or makes any combination of calls or contact, to another person is, whether or not conversation ensues from making the telephone call or contact by means of an electronic communication device, guilty of a misdemeanor. Nothing in this subdivision shall apply to telephone calls or electronic contacts made in good faith or during the ordinary course and scope of business."); (Maryland) Md. Code Ann., Crim. Law § 3-804 ("A person may not use telephone facilities or equipment to make: (1) an anonymous call that is reasonably expected to annoy, abuse, torment, harass, or embarrass another; (2) repeated calls with the intent to annoy, abuse, torment, harass, or embarrass another"); (Oklahoma) 21 Okl. St. § 1172 ("It shall be unlawful for a person who, by means of a telecommunication or other electronic communication device, willfully either: 6. In conspiracy or concerted action with other persons, makes repeated calls or electronic communications or simultaneous calls or electronic communications solely to harass any person at the called number(s)").

[115] Barr v. Am. Ass'n of Political Consultants, 140 S. Ct. 2335 (2020) (upholding the Act except for its debt-collection exception).

[116] Telephone Consumer Protection Act of 1991, 105 Stat. 2394, 2395, codified at 15 U.S.C. § 6101.

Thus, the cases that struggled over how to fit spam into the list of section 230(c)(2) could simply have analogized spam as similar to harassing or nuisance phone calls.

The regulatory meanings, as understood in 1996 and used in the Communications Decency Act, itself, constitute the thread that unites the meanings of "obscene, lewd, lascivious, filthy, excessively violent, and harassing." All deal with issues involving media and communications content regulation intended to create safe, family environments. Compelling that conclusion is "the presumption of consistent usage—the rule of thumb that a term generally means the same thing each time it is used . . . [particularly for] terms appearing in the same enactment."[117] To ensure clear and consistent interpretations of the terms used in subsection 230(c)(2), NTIA requests, therefore, that the FCC add the below Subpart E to 47 CFR Chapter I:

> **Subpart E. Clarifying Subsection 230(c)(2).**
> § 130.02
> As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:
>
> **(a) "obscene," "lewd," "lascivious," and "filthy"**
> The terms "obscene," "lewd," "lascivious," and "filthy" mean material that:
> i. taken as a whole, appeals to the prurient interest in sex or portrays sexual conduct in a patently offensive way, and which, taken as a whole, does not have serious literary, artistic, political, or scientific value;
> ii. depicts or describes sexual or excretory organs or activities in terms patently offensive as measured by contemporary community standards; to the average person, applying contemporary community standards; or
> iii. signifies the form of immorality which has relation to sexual impurity, and have the same meaning as is given them at common law in prosecutions for obscene libel.
>
> **(b) "excessively violent"**
> The term "excessively violent" means material that:
> i. is likely to be deemed violent and for mature audiences according the Federal Communications Commission's V-chip regulatory regime and TV Parental Guidance, promulgated pursuant to Section 551 of the 1996

[117] United States v. Castleman, 572 U.S. 157, 174 (2014), citing IBP, Inc. v. Alvarez, 546 U.S. 21, 33–34 (2005) (Scalia, J., conc.).

Telecommunications Act, Pub. L. No. 104-104, § 551, 110 Stat. 139-42 (codified at 47 U.S.C. § 303; § 330(c)(4)); or

ii. constitutes or intends to advocate domestic terrorism or international terrorism, each as defined in 18 U.S.C. § 2331 ("terrorism").

(c) "harassing"

The term "harassing" means any material that:

i. that sent by an information content provider that has the subjective intent to abuse, threaten, or harass any specific person and is lacking in any serious literary, artistic, political, or scientific value;

ii. regulated by the CAN-SPAM Act of 2003, 117 Stat. 2699; or

iii. that is malicious computer code intended (whether or not by the immediate disseminator) to damage or interfere with the operation of a computer.

(d) "otherwise objectionable"

The term "otherwise objectionable" means any material that is similar in type to obscene, lewd, lascivious, filthy, excessively violent, or harassing materials.

b. "Good faith"

The phrase "good faith" in section 230(c) is also ambiguous. On one hand, most courts, in interpreting the phrase, have looked to pretext, dishonesty, or refusing to explain wrongful behavior when finding good faith or lack thereof in the removal of content. As the United States Court of Appeals for the Ninth Circuit explains, "unless § 230(c)(2)(B) imposes some good faith limitation on what a blocking software provider can consider 'otherwise objectionable' . . . immunity might stretch to cover conduct Congress very likely did not intend to immunize." Under the generous coverage of section 230(c)(2)(B)'s immunity language, a blocking software provider might abuse that immunity to block content for anticompetitive purposes or merely at its malicious whim, under the cover of considering such material "otherwise objectionable."[118] At the same time, some courts, focusing the words "the provider or user considers to be

[118] Zango, 568 F.3d at 1178 (Fisher, J., concurring). The Ninth Circuit has adopted Judge Fisher's reasoning. See Enigma, 946 F.3d at 1049.

obscene," see the provision's immunity available whenever an interactive computer service simply claims to consider the material as fitting within the provision's categories. Thus, "good faith" simply means the existence of some "subjective intent."[119]

Good faith requires transparency about content moderation disputes processes. In order to qualify for section 230(c)(2)'s immunity, a social media platform, or any interactive computer service, must demonstrate in a transparent way that when it takes action pursuant to section 230(c)(2), it provides adequate notice, reasoned explanation, or a meaningful opportunity to be heard."[120]

To ensure clear and consistent interpretation of the "good faith" standard, NTIA requests that the FCC further add the below to newly requested 47 CFR Chapter I Subchapter E Section 130.02:

> **(e) "good faith"**
> A platform restricts access to or availability of specific material (including, without limitation, its scope or reach) by itself, any agent, or any unrelated party in "good faith" under 47 U.S.C. § (c)(2)(A) if it:
>
> i. restricts access to or availability of material or bars or refuses service to any person consistent with publicly available terms of service or use that state plainly and with particularity the criteria the interactive computer service employs in its content-moderation practices, including by any partially or fully automated processes, and that are in effect on the date such content is first posted;
> ii. has an objectively reasonable belief that the material falls within one of the listed categories set forth in 47 U.S.C. § 230(c)(2)(A);
> iii. does not restrict access to or availability of material on deceptive or pretextual grounds, and does not apply its terms of service or use to restrict access to or availability of material that is similarly situated to material that the interactive computer service intentionally declines to restrict; and
> iv. supplies the interactive computer service of the material with timely notice describing with particularity the interactive computer service's reasonable factual basis for the restriction of access and a meaningful opportunity to respond, unless the interactive computer service has an objectively

[119] Domen, 433 F.Supp. 3d 592.
[120] E.O. 13925, Sec. 2(b).

reasonable belief that the content is related to criminal activity or such notice would risk imminent physical harm to others.

3. Section 230(c)(1) and 230(f)(3)

Section 230(c)(1) places "information content providers," i.e., entities that create and post content, outside its protections. This means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the internet, does not receive the statute's shield. Numerous cases have found that interactive computer service's designs and policies render it an internet content provider, outside of section 230(c)(1)'s protection. But the point at which a platform's form and policies are so intertwined with users' postings so as to render the platform an "information content provider" is not clear.

Courts have proposed numerous interpretations, most influentially in the Ninth Circuit in Fair Housing Council of San Fernando Valley v. Roommates.Com.[121] There, the court found that "[b]y requiring subscribers to provide the information as a condition of accessing its service, and by providing a limited set of pre-populated answers, Roommate becomes much more than a passive transmitter of information."[122] The court continued, "[w]e interpret the term 'development' as referring not merely to augmenting the content generally, but to materially contributing to its alleged unlawfulness. In other words, a website helps to develop unlawful content, and thus falls within the exception to section 230, if it contributes materially to the alleged illegality of the conduct."[123] But, this definition has failed to provide clear guidance, with courts struggling to define "material contribution."[124]

[121] Fair Hous. Council, 521 F.3d at 1166.
[122] Id.
[123] Id. at 1167–68 (emphasis added); see also Dirty World Entertainment, 755 F.3d at 411.
[124] See, e.g., People v. Bollaert, 248 Cal. App. 4th 699, 717 (2016).

Further, not all courts accept the material contribution standard. The Seventh Circuit concludes that "[a] company can, however, be liable for creating and posting, inducing another to post, or otherwise actively participating in the posting of a defamatory statement in a forum that that company maintains."[125] Other circuits conclude that a website becomes an information content provider by "solicit[ing] requests" for the information and then "pa[ying] researchers to obtain it."[126]

This confusion stems from the difference between the way an online bulletin board worked in the 1990s, which simply posted content, and how social media works today. As Federal Trade Commissioner Rohit Chopra explained, new social media shape and control information and online experience often as an expression of platforms' and their advertisers' goals rather than their users':

> "[Section 230] seeks to foster an environment where information and ideas can flourish. If a company is just helping move information from point A to point B, that company is just like the mail carrier or the telegraph company. That makes sense . . . . But the tech market has dramatically shifted in the decades since this law was enacted . . . . I would argue that once platforms started prioritizing their paid predictions, the content became more a reflection of advertisers targeting users, than users' own preferences."[127]

In light of modern technology, the FCC should clarify the circumstances under which an interactive computer service becomes an information content provider. Interactive computer services that editorialize particular user comments by adding special responses or warnings appear to develop and create content in any normal use of the words. Analogously, district

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[125] Huon v. Denton, 841 F.3d 733, 742 (7th Cir. 2016).
[126] FTC v. Accusearch Inc., 570 F.3d 1187, 1199–1200 (10th Cir. 2009).
[127] Rohit Chopra, Tech Platforms, Content Creators, and Immunity, American Bar Association, Section of Antitrust Law Annual Spring Meeting, Washington, D.C. (Mar. 28, 2019) (transcript available online at https://www.ftc.gov/system/files/documents/public_statements/1510713/chopra_-_aba_spring_meeting_3-28-19_0.pdf (last visited June 15, 2020)).

courts have concluded that when interactive computer services' "employees . . . authored comments," the interactive computer services would become content providers.[128] In addition, prioritization of content under a variety of techniques, particularly when it appears to reflect a particularly viewpoint, might render an entire platform a vehicle for expression and thus an information content provider.

To clarify when interactive computer services become information content providers through developing and creating content through the presentation of user-provided material, NTIA requests that the FCC add the below Subpart E to 47 CFR Chapter I:

> **Subpart E. Clarifying Subsection 230(f)(2).**
> § 130.03
> As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:
>
> For purposes of 47 U.S.C. § 230(f)(3), "responsible, in whole or in part, for the creation or development of information" includes substantively contributing to, modifying, altering, presenting or prioritizing with a reasonably discernible viewpoint, commenting upon, or editorializing about content provided by another information content provider.

4. "Treated as a Publisher or Speaker"

Finally, the ambiguous term "treated as a publisher or speaker" is a fundamental question for interpreting that courts in general have not addressed squarely. One of the animating concerns for section 230 was court decisions holding online platforms liable as publishers for third-party speech, when in fact they were merely passive bulletin boards. By prohibiting an interactive computer service from being "treated" as a publisher or speaker, therefore, section 230 could be interpreted as not converting non-publisher platforms into publishers simply because they passively transmit third-party content. That does not, however, mean that the

[128] Huon, 841 F.3d at 742.

statute meant to immunize online platforms when they actually act as publishers and exert significant control over the third-party speech and the message it conveys.

FCC Chairman Pai made a similar point by asking if selective content moderation based on ideology eventually becomes "editorial judgment":

> Are these tech giants running impartial digital platforms over which they don't exercise editorial judgment when it comes to content? Or do they in fact decide what speech is allowed and what is not and discriminate based on ideology and/or political affiliation? [129]

If content-moderating can never, no matter how extreme or arbitrary, become editorializing that no longer remains the "speech of another," then section 230(c)(1) will subsume section 230(c)(2) and eliminate liability for all interactive computer services' decisions to restrict content. Interpreting "speaker or publisher" so broadly is especially harmful when platforms are opaque and deceptive in their content-monitoring policies.

This concern is hardly theoretical, given the highly inconsistent, baffling, and even ideologically driven content moderating decisions that the large interactive computer services have made, at least according to numerous accounts. For instance, one interactive computer service made the editorial decision to exclude legal content pertaining to firearms,[130] content that was deemed acceptable for broadcast television,[131] thereby chilling the speech of a political candidate supportive of gun rights. Another interactive computer service has suppressed the

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[129] Ajit Pai, What I Hope to Learn from the Tech Giants, FCC Blog (Sept. 4, 2018), https://www.fcc.gov/news-events/blog/2018/09/04/what-i-hope-learn-tech-giants.
[130] Facebook, Inc., Facebook Prohibited Content: 7. Weapons, Ammunition, or Explosives, https://www.facebook.com/policies/ads/prohibited_content/weapons (last visited June 15, 2020).
[131] Maria Schultz, Facebook pulls ad from gun-toting Georgia candidate taking on Antifa: 'Big Tech censorship of conservatives must end', Fox News (June 6, 2020), https://www.foxnews.com/politics/facebook-pulls-ad-from-gun-toting-georgia-candidate-big-tech-censorship-of-conservatives-must-end.

speech of an American politician for "glorifying violence"[132] while permitting that of a foreign politician glorifying violence to pass without action,[133] as publicly noted by the FCC Chairman.[134] Still another interactive computer service, purporting to be a document repository and editing service,[135] deleted a controversial paper about a potential therapy for COVID-19,[136] stating simply that it was in violation of the site terms of service.[137] A major food-workers' union has objected to social media-implemented internal communication networks for companies, or "intranets," implementing automated censorship to prevent discussions of unionization.[138]

At common law, as a general matter, one is liable for defamation only if one makes "an affirmative act of publication to a third party."[139] This "affirmative act requirement" ordinarily

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[132] Alex Hern, Twitter hides Donald Trump tweet for 'glorifying violence', The Guardian (May 29, 2020), https://www.theguardian.com/technology/2020/may/29/twitter-hides-donald-trump-tweet-glorifying-violence.
[133] White House official Twitter account (May 29, 2020), https://twitter.com/WhiteHouse/status/1266367168603721728.
[134] Ajit Pai verified Twitter account (May 29, 2020), https://twitter.com/AjitPaiFCC/status/1266368492258816002.
[135] Google, Inc., Google Docs "About" page, https://www.google.com/docs/about/ (last visited June 15, 2020) ("Google Docs brings your documents to life with smart editing and styling tools to help you easily format text and paragraphs. Choose from hundreds of fonts, add links, images, and drawings. All for free . . . . Access, create, and edit your documents wherever you go — from your phone, tablet, or computer — even when there's no connection.").
[136] Thomas R. Broker, et al., An Effective Treatment for Coronavirus (COVID-19), (Mar. 13, 2020), page archived at https://archive.is/BvzkY (last visited June 15, 2020).
[137] Google, Inc., Google Docs result for https://docs.google.com/document/d/e/2PACX-1vTi-g18ftNZUMRAj2SwRPodtscFio7bJ7GdNgbJAGbdfF67WuRJB3ZsidgpidB2eocFHAVjIL-7deJ7/pub (last visited June 15, 2020) ("We're sorry. You can't access this item because it is in violation of our Terms of Service.").
[138] United Food and Commercial Workers International Union, Facebook Censorship of Worker Efforts to Unionize Threatens Push to Strengthen Protections for Essential Workers During COVID-19 Pandemic (June 12, 2020), http://www.ufcw.org/2020/06/12/censorship/.
[139] Benjamin C. Zipursky, Online Defamation, Legal Concepts, and the Good Samaritan, 51 Val. U. L. Rev. 1, 18 (2016) , available at https://scholar.valpo.edu/cgi/viewcontent.cgi?article=2426&context=vulr.

"depict[s] the defendant as part of the initial making or publishing of a statement."[140] The common law also recognized a "narrow exception to the rule that there must be an affirmative act of publishing a statement."[141] A person "while not actually publishing—will be subjected to liability for the reputational injury that is attributable to the defendant's failure to remove a defamatory statement published by another person."[142] Such a duty might apply where a defendant has undertaken an affirmative duty to remove. Stratton Oakmont embodies the latter idea: The court held that Prodigy, having undertaken to moderate some content on its page, thereby assumed an affirmative duty to moderate all content on its site. At common law, then, the publication element of defamation could be satisfied either through the rule—an affirmative act—or the exception—an omission where an affirmative duty applies.

Section 230(c)(1)'s "treated as the publisher or speaker" could plausibly be understood to foreclose liability only if a defendant would satisfy the exception. Satisfying the exception subjects one to defamation liability as if he were the publisher or speaker of the content, although he did not "actually publish[]" the content.[143] He is not a "true publisher" in the sense of satisfying the affirmative act requirement, but he is deemed or regarded as if he were because he had an affirmative duty to moderate.[144] This interpretation of section 230(c)(1) reads it to foreclose the very argument courts may have been on track to embrace after Stratton Oakmont, viz., that a platform has an affirmative duty to remove defamatory content and will be treated as satisfying the publication element of defamation for nonfeasance in the same way as a true publisher. Section 230(c)(1) states—in the face of Stratton Oakmont's contrary holding—a

[140] Id. at 19.
[141] Id. at 20.
[142] Id. at 21 (citing Restatement (Second) of Torts § 577(2) (Am. Law Inst. 1977)).
[143] Zipursky, 51 Val. L. Rev. at 21.
[144] Id. at 45.

general rule: There is no affirmative duty to remove. For that reason, section 230(c)(1) should be construed to concern only failures to remove and not takedowns, and not to apply when a platform "actually publishes" content.

NTIA suggests that the FCC can clarify the ambiguous phrase "speaker or publisher" by establishing that section 230(c)(1) does not immunize the conduct of an interactive service provider that is actually acting as a publisher or speaker in the traditional sense. Two points follow. First, when a platform moderates outside of section 230(c)(2)(A), section 230(c)(1) does not provide an additional, broader immunity that shields content takedowns more generally. Such affirmative acts are outside of the scope of (c)(1). Second, when a platform reviews third-party content already displayed on the internet and affirmatively vouches for it, editorializes, recommends, or promotes such content on the basis of the content's substance or message, the platform receives no section 230(c)(1) immunity. NTIA therefore requests that the FCC further add the below to newly requested Subpart E to 47 CFR Chapter I:

Subpart E. Clarifying Subsection 230(f)(2).

§ 130.04

(c) An interactive computer service is not being "treated as the publisher or speaker of any information provided by another information content provider" when it actually publishes its own or third-party content. Circumstances in which an interactive computer service actually publishes content include when:

(i) it affirmatively solicits or selects to display information or content either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool pursuant to a reasonably discernible viewpoint or message, without having been prompted to, asked to, or searched for by the user; and
(ii) it reviews third-party content already displayed on the Internet and affirmatively vouches for, editorializes, recommends, or promotes such content to other Internet users on the basis of the content's substance or messages. This paragraph applies to a review conducted, and a recommendation made, either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool.

(d) An interactive computer service does not publish content merely by:

(i) providing content in a form or manner that the user chooses, such as non-chronological order, explicit user preferences, or because a default setting of the service provides it, and the interactive computer service fully informs the user of this default and allows its disabling; or

(ii) transmitting, displaying, or otherwise distributing such content, or merely by virtue of moderating third-party content consistent with a good faith application of its terms of service in force at the time content is first posted. Such an interactive computer service may not, by virtue of such conduct, be "treated as a publisher or speaker" of that third-party content. 47 U.S.C. § 230(c)(1).

VI. Title I and Sections 163 and 257 of the Act Permit the FCC to Impose Disclosure Requirements on Information Services

With roots in the Modified Final Judgment for the break-up of AT&T[145] and codified by the Telecommunications Act of 1996,[146] the term "information service" refers to making information available via telecommunications. Under FCC and judicial precedent, social media sites are "information services." As such, courts have long recognized the Commission's power to require disclosure of these services under sections 163 and 257.

A. Social media are information services

Section 230(f)(2) explicitly classifies "interactive computer services" as "information services," as defined in 47 U.S.C. § 153(20).[147] Further, social media fits the FCC's definition of

[145] United States v. Am. Tel. & Tel. Co., 552 F. Supp. 131, 179 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) (observing that "'Information services' are defined in the proposed decree at Section IV(J) as: the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information which may be conveyed via telecommunications").

[146] 47 U.S.C. § 153(24).

[147] Id. ("[T]he offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.").

enhanced services.[148] In Brand X, the Supreme Court explained, "The definitions of the terms 'telecommunications service' and 'information service' established by the 1996 Act are similar to the Computer II basic-and enhanced-service classifications" with "'information service'—the analog to enhanced service."[149]

Numerous courts have ruled that search engines, browsers and internet social media precursors such as chat rooms are information services.[150] Courts have long recognized edge providers as information services under Title I. For example, in Barnes, the U.S. Court of Appeals for the Ninth Circuit classifies Yahoo's social networking services an "information service," interchangeably with "interactive computer service," and in Howard v. Am. Online, the same court designates America Online's messaging facilities "enhanced services."[151]

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[148] 47 CFR § 64.702 ("[S]ervices, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information.").

[149] Nat'l Cable & Telecommunications Ass'n v. Brand X Internet Servs., 545 U.S. 967, 977 (2005).

[150] Mozilla Corp. v. F.C.C., 940 F.3d 1, 34 (D.C. Cir. 2019) ("But quite apart from the fact that the role of ISP-provided browsers and search engines appears very modest compared to that of DNS and caching in ISPs' overall provision of Internet access, Petitioners are in a weak posture to deny that inclusion of 'search engines and web browsers' could support an 'information service' designation . . . since those appear to be examples of the 'walled garden' services that Petitioners hold up as models of 'information service'-eligible offerings in their gloss of Brand X.") (internal citations omitted); FTC v. Am. eVoice, Ltd., 242 F. Supp. 3d 1119 (D. Mont. 2017) (Email and online "chat rooms" "were enhanced services because they utilized transmission lines to function, as opposed to acting as a pipeline for the transfer of information . . . . 'This conclusion is reasonable because e-mail fits the definition of an enhanced service.'" (quoting Howard v. Am. Online Inc., 208 F.3d 741, 746 (9th Cir. 2000)). "Also excluded from coverage are all information services, such as Internet service providers or services such as Prodigy and America-On-Line." H.R. Rep. No. 103-827, at 18 (1994), as reprinted in 1994 U.S.C.C.A.N. 3489, 3498

[151] Barnes, 570 F.3d at 1101.

B. Several statutory sections empower the FCC to mandate disclosure

Beyond having jurisdiction over social media as information services, the FCC has clear statutory authority to impose disclosure requirements under sections 163 and 257 of the Communications Act. Section 163 charges the FCC to "consider all forms of competition, including the effect of intermodal competition, facilities-based competition, and competition from new and emergent communications services, including the provision of content and communications using the Internet" and "assess whether laws, regulations, regulatory practices . . . pose a barrier to competitive entry into the communications marketplace or to the competitive expansion of existing providers of communications services."[152] Section 257(a) of the Communications Act requires the FCC to examine market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services."[153]

In its 2018 Internet Order, the Commission relied on section 257 to impose service transparency requirements on providers of the information service of broadband internet access. It reasoned that doing so would reduce entry barriers.[154] Similar reasoning applies to requiring transparency for social media. Clear, current, readily accessible and understandable descriptions of an interactive computer service provider's content moderation policies would help enterprising content providers fashion their offerings so that they can be provided across multiple

[152] 47 U.S.C. § 163.
[153] 47 U.S.C. § 257(a) (2018). While section 257 was amended and repealed in part, its authority remained intact in section 163. "Congress emphasized that '[n]othing in this title [the amendment to the Telecommunications Act creating section 163] or the amendments made by this title shall be construed to expand or contract the authority of the Commission." Mozilla, 940 F.3d at 47 citing Pub. L. No. 115-141, Div. P, § 403, 132 Stat. at 1090.
[154] Federal Communications Commission, In the Matter of Restoring Internet Freedom, 33 F.C.C. Rcd. 311 (2018).

platforms with reduced costs and friction for the provider and fewer disruptions to user experiences.[155]

Perhaps more important, information about an interactive computer service provider's content moderation policies would help entities design filtering products that could improve the providers' implementation of those policies, or assist consumers in remedying the gaps they may see in the providers' policies. Certainly, empowering consumers with blocking technologies that they choose and control—rather than accepting a platform's top-down centralized decisions, would directly advance section 230's policy of encouraging "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."[156] Increasing transparency about online platforms' content moderation practices would also enable users to make more informed choices about competitive alternatives.

Consumers today have a one-way relationship with social media transparency; platforms know everything about consumers, but consumers know very little about how or why platforms exercise influence or direct control over consumers' speech. Certain information disappears or becomes difficult to find, while other information is promoted and prominently displayed. Inevitably, some consumers and content creators begin to worry that secretive forces within platform providers are manipulating social media for ends that can only be guessed at.[157] Such suspicion is inevitable when there is so little transparency about the process behind the social media visibility of user-provided content, even when policies are applied fairly and no

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[155] See supra Section IV.
[156] 47 U.S.C. § 230(a)(3).
[157] Rod Dreher, Google Blacklists Conservative Websites (July 21, 2020), https://www.theamericanconservative.com/dreher/google-blacklists-conservative-websites/.

wrongdoing has taken place. By increasing transparency to consumers, platforms would ensure that consumers can choose to consume social media whose policies they agree with without fear that manipulations to which they did not consent are happening behind the scenes.

The importance of disclosure to our communications networks cannot be underestimated. Chairman Pai recognizes that democracies must require transparency and to ensure the proper function of essential communications networks.[158] That is why, when eliminating Title II common carrier so-called "network neutrality" regulations, Chairman Pai's FCC retained Title I disclosure requirements for broadband access service providers.

The same is true for other information service providers. Speaking of the social media platforms, FCC Chairman Ajit Pai asked "how do these companies make decisions about what we see and what we don't? And who makes those decisions?"[159] For social media, it is particularly important to ensure that large firms avoid "deceptive or pretextual actions stifling free and open debate by censoring certain viewpoints,"[160] or engage in deceptive or pretextual actions (often contrary to their stated terms of service) to stifle viewpoints with which they disagree."[161]

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[158] Federal Communications Commission, In the Matter of Restoring Internet Freedom, WC Docket No. 17-108, Declaratory Ruling, Report And Order, And Order (Jan, 4, 2018) ¶ 209, available at https://www.fcc.gov/document/fcc-releases-restoring-internet-freedom-order ("'Sunlight,' Justice Brandeis famously noted, 'is . . . the best of disinfectants.' This is the case in our domain. Properly tailored transparency disclosures provide valuable information to the Commission to enable it to meet its statutory obligation to observe the communications marketplace to monitor the introduction of new services and technologies, and to identify and eliminate potential marketplace barriers for the provision of information services. Such disclosures also provide valuable information to other Internet ecosystem participants.").

[159] Ajit Pai, What I Hope to Learn from the Tech Giants (Sept. 4, 2018), https://www.fcc.gov/news-events/blog/2018/09/04/what-i-hope-learn-tech-giants (last visited June 15, 2020).

[160] E.O. 13925, Section 2(a).

[161] Id.

To prevent these ends, NTIA requests that the FCC further add the below to Subpart E to 47 CFR Chapter I Subchapter A Part 8:

§ 8.2 Transparency for Interactive Computer Services.

Any person providing an interactive computer service in a manner through a mass-market retail offering to the public shall publicly disclose accurate information regarding its content-management mechanisms as well as any other content moderation, promotion, and other curation practices of its interactive computer service sufficient to enable (i) consumers to make informed choices regarding the purchase and use of such service and (ii) entrepreneurs and other small businesses to develop, market, and maintain offerings by means of such service. Such disclosure shall be made via a publicly available, easily accessible website or through transmittal to the Commission.

VII. Conclusion

For the foregoing reasons, NTIA respectfully requests that the Commission institute a rulemaking to interpret Section 230 of the Communications Act.

Respectfully submitted,

_____
Douglas Kinkoph
Performing the Delegated Duties of the
Assistant Secretary for Commerce for
Communications and Information

July 27, 2020

APPENDIX A: Proposed Rules

47 CFR Chapter I, Subchapter E
Part 130 – Section 230 of the Communications Decency Act.

Interpreting Subsection 230(c)(1) and Its Interaction With Subsection 230(c)(2).
§ 130.01
As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

(a) 47 U.S.C. 230(c)(1) applies to an interactive computer service for claims arising from failure to remove information provided by another information content provider. Section 230(c)(1) has no application to any interactive computer service's decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service. Any applicable immunity for matters described in the immediately preceding sentence shall be provided solely by 47 U.S.C. § 230(c)(2).

(b) An interactive computer service is not a publisher or speaker of information provided by another information content provider solely on account of actions voluntarily taken in good faith to restrict access to or availability of specific material in accordance with subsection (c)(2)(A) or consistent with its terms of service or use.

(c) An interactive computer service is not being "treated as the publisher or speaker of any information provided by another information content provider" when it actually publishes its own or third-party content. Circumstances in which an interactive computer service actually publishes content include when:

(i) it affirmatively solicits or selects to display information or content either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool pursuant to a reasonably discernible viewpoint or message, without having been prompted to, asked to, or searched for by the user;

(ii) it reviews third-party content already displayed on the Internet and affirmatively vouches for, editorializes, recommends, or promotes such content to other Internet users on the basis of the content's substance. This paragraph applies to a review conducted, and a recommendation made, either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool.

(d) An interactive computer service does not publish content merely by:

(1) providing content in a form or manner that the user chooses, such as non-chronological order, explicit user preferences, or because a default

setting of the service provides it, and the interactive computer service fully informs the user of this default and allows its disabling; or
(2) transmitting, displaying, or otherwise distributing such content, or merely by virtue of moderating third-party content consistent with a good faith application of its terms of service in force at the time content is first posted. Such an interactive computer service may not, by virtue of such conduct, be "treated as a publisher or speaker" of that third-party content. 47 U.S.C. § 230(c)(1).

Clarifying Subsection 230(c)(2).
§ 130.02
As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

(a) "obscene," "lewd," lascivious" and "filthy"
The terms "obscene," "lewd," "lascivious," and "filthy" mean material that

iv. taken as a whole, appeals to the prurient interest in sex or portrays sexual conduct in a patently offensive way, and which, taken as a whole, does not have serious literary, artistic, political, or scientific value;
v. depicts or describes sexual or excretory organs or activities in terms patently offensive as measured by contemporary community standards; to the average person, applying contemporary community standards; or
vi. signifies the form of immorality which has relation to sexual impurity, and have the same meaning as is given them at common law in prosecutions for obscene libel.

(b) "excessively violent"
The term "excessively violent" means material that

iii. is likely to be deemed violent and for mature audiences according the Federal Communications Commission's V-chip regulatory regime and TV Parental Guidance, promulgated pursuant to Section 551 of the 1996 Telecommunications Act Pub. L. No. 104-104, § 551, 110 Stat. 139-42 (codified at 47 U.S.C. § 303; § 330(c)(4));
iv. constitutes or intends to advocate domestic terrorism or international terrorism, each as defined in 18 U.S.C. § 2331 ("terrorism").

(c) "harassing"
The term "harassing" means any material that

iv. that sent by an information content provider that has the subjective intent to abuse, threaten, or harass any specific person and is lacking in any serious literary, artistic, political, or scientific value;
v. regulated by the CAN-SPAM Act of 2003, 117 Stat. 2699; or
vi. that is malicious computer code intended (whether or not by the immediate disseminator) to damage or interfere with the operation of a computer.

(d) "otherwise objectionable"
The term "otherwise objectionable" means any material that is similar in type to obscene, lewd, lascivious, filthy, excessively violent, or harassing materials.

(e) "good faith"

A platform restricts access to or availability of specific material (including, without limitation, its scope or reach) by itself, any agent, or any unrelated party in "good faith" under 47 U.S.C. § (c)(2)(A) if it:

v. restricts access to or availability of material or bars or refuses service to any person consistent with publicly available terms of service or use that state plainly and with particularity the criteria the interactive computer service employs in its content-moderation practices, including by any partially or fully automated processes, and that are in effect on the date such content is first posted;

vi. has an objectively reasonable belief that the material falls within one of the listed categories set forth in 47 U.S.C. § 230(c)(2)(A);

vii. does not restrict access to or availability of material on deceptive or pretextual grounds, and does not apply its terms of service or use to restrict access to or availability of material that is similarly situated to material that the interactive computer service intentionally declines to restrict; and

viii. supplies the interactive computer service of the material with timely notice describing with particularity the interactive computer service's reasonable factual basis for the restriction of access and a meaningful opportunity to respond, unless the interactive computer service has an objectively reasonable belief that the content is related to criminal activity or such notice would risk imminent physical harm to others.

Clarifying Subsection 230(f)(2).

§ 130.03

As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

For purposes of 47 U.S.C. § 230(f)(3), "responsible, in whole or in part, for the creation or development of information" includes substantively contributing to, modifying, altering, presenting with a reasonably discernible viewpoint, commenting upon, or editorializing about content provided by another information content provider.

47 CFR Chapter I Subchapter A Part 8 ---Internet Freedom.

§ 8.2 Transparency for Interactive Computer Services.

Any person providing an interactive computer service in a manner through a mass-market retail offering to the public shall publicly disclose accurate information regarding its content-management mechanisms as well as any other content moderation, promotion, and other curation practices of its interactive computer service sufficient to enable (i) consumers to make informed choices regarding the purchase and use of such service and (ii) entrepreneurs and other small businesses to develop, market, and maintain offerings by means of such service. Such disclosure shall be made via a publicly available, easily accessible website or through transmittal to the Commission.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Section 230 of the	)	File No. RM-_____
Communications Act of 1934	)	

To: The Commission

PETITION FOR RULEMAKING OF THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

National Telecommunications and
Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230
(202) 482-1816

July 27, 2020

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Section 230 of the	)	File No. RM-_____
Communications Act of 1934	)	

To: The Commission

PETITION FOR RULEMAKING OF THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

Pursuant to section 1.401 of the Code of Federal Regulations,[1] in accordance with Executive Order 13925 (E.O. 13925),[2] and through the National Telecommunications and Information Administration (NTIA), the Secretary of Commerce (Secretary) respectfully requests that the Federal Communications Commission (FCC or Commission) initiate a rulemaking to clarify the provisions of section 230 of the Communications Act of 1934, as amended.[3] NTIA, as the President's principal adviser on domestic and international telecommunications and information policy, is charged with developing and advocating policies concerning the regulation of the telecommunications industry and "ensur[ing] that the views of the executive branch on telecommunications matters are effectively presented to the Commission . . . ."[4] Specifically, per E.O. 13925, NTIA requests that the Commission propose rules to clarify:

[1] 47 CFR § 1.401(a).
[2] Exec. Order No. 13925: Preventing Online Censorship, 85 Fed. Reg. 34,079 (June 2, 2020) (E.O. 13925).
[3] 47 U.S.C. § 230.
[4] 47 U.S.C. § 902(b)(2)(J); see also 47 U.S.C. §§ 901(c)(3), 902(b)(2)(I) (setting forth related duties).

(i) the interaction between subparagraphs (c)(1) and (c)(2) of section 230, in particular to clarify and determine the circumstances under which a provider of an interactive computer service that restricts access to content in a manner not specifically protected by subparagraph (c)(2)(a) may also not be able to claim protection under subparagraph (c)(1);[5]

(ii) the conditions under which an action restricting access to or availability of material is not "taken in good faith" within the meaning of subparagraph (c)(2)(A) of section 230, particularly whether actions can be "taken in good faith" if they are

(A) deceptive, pretextual, or inconsistent with a provider's terms of service; or

(B) taken after failing to provide adequate notice, reasoned explanation, or a meaningful opportunity to be heard;[6] and

(iii) any another proposed regulation that NTIA concludes may be appropriate to advance the policy described in subsection (a) of E.O. 13925, to impose disclosure requirements similar those imposed on other internet companies, such as major broadband service providers, to promote free and open debate on the internet.[7]

[5] See infra sections V.E.1, V.E.3 and section V.E.4.
[6] See infra section V.E.2.
[7] See infra section VI.

I. Statement of Interest

Since its inception in 1978, NTIA has consistently supported pro-competitive, pro-consumer telecommunications and internet policies. NTIA files this petition pursuant to E.O. 13925 to ensure that section 230 of the Communications Act of 1934, as amended, continues to further these goals. The President, through E.O. 13925, has directed the Secretary to file this petition for rulemaking through NTIA.[8]

II. Summary of Argument

Freedom of expression defends all our other freedoms. Only in a society that protects free expression can citizens criticize their leaders without fear, check their excesses, and expose their abuses. As Ben Franklin stated, "[w]hoever would overthrow the Liberty of a Nation, must begin by subduing the Freeness of Speech."[9] However, social media and its growing dominance present troubling questions on how to preserve First Amendment ideals and promote diversity of voices in modern communications technology. Social media's power stems in part from the legal immunities granted by the Communications Decency Act of 1996.[10] Congress passed the statute in the beginning of the internet age with the goal of creating a safe internet for children. It did so by protecting children from pornography and providing incentives for platforms to

[8] E.O. 13925, Section 2(b).
[9] Benjamin Franklin, Silence Dogood No. 8, The New-England Courant, July 9, 1722.
[10] Communications Decency Act of 1996 (CDA), Pub. L. No. 104-104, 110 Stat. 133, Title V—Obscenity and Violence, § 509 "Online family empowerment," codified at 47 U.S.C. 230, "Protection for private blocking and screening of offensive material." The CDA was incorporated as Title V to the Telecommunications Act of 1996, which in turn, was incorporated in the Communications Act of 1934. While these laws are all now part of the same statute, they do have separate histories and will be referred to individually when necessary.

remove harmful content. While the Supreme Court struck down the provisions limiting pornography, section 230 remained.[11]

Section 230 is the legislative response to a New York state case, Stratton Oakmont, Inc. v. Prodigy Servs. Co.[12] In this case, the court extended tort liability to internet bulletin boards and ruled that defendant Prodigy Services Company would be liable for the entire content of their platform if they engaged in editing and moderation to remove distasteful content.[13] Congress intended section 230 to offer platforms immunity from liability under certain circumstances, namely to encourage platforms to moderate specific types of material, mostly that are sexual or inappropriate to minors. It is vital to remember, however, that Congress in section 230 also had the express purpose of ensuring that the "Internet and other [internet platforms] offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity."[14]

Times have changed, and the liability rules appropriate in 1996 may no longer further Congress's purpose that section 230 further a "true diversity of political discourse." A handful of large social media platforms delivering varied types of content over high-speed internet have replaced the sprawling world of dial-up Internet Service Providers (ISPs) and countless bulletin boards hosting static postings. Further, with artificial intelligence and automated methods of textual analysis to flag harmful content now available, unlike at the time of Stratton Oakmont, Inc., platforms no longer need to manually review each individual post but can review, at much

[11] Reno v. American Civil Liberties Union, 521 U.S. 844 (1997).
[12] 1995 WL 323710 (N.Y. Sup. Ct., May 24, 1995) (unpublished). See also, Force v. Facebook, Inc., 934 F.3d 53, 63-64 (2d Cir. 2019) ("To overrule Stratton . . . .").
[13] Stratton Oakmont, 1995 WL 323710, at *3.
[14] 47 U.S.C. § 230(a)(3).

lower cost, millions of posts.[15] Thus, the fundamental assumptions driving early section 230 interpretation are antiquated and lack force, thus necessitating a recalibration of section 230 protections to accommodate modern platforms and technologies.

The FCC should use its authorities to clarify ambiguities in section 230 so as to make its interpretation appropriate to the current internet marketplace and provide clearer guidance to courts, platforms, and users. NTIA urges the FCC to promulgate rules addressing the following points:

1. Clarify the relationship between subsections (c)(1) and (c)(2), lest they be read and applied in a manner that renders (c)(2) superfluous as some courts appear to be doing.

2. Specify that Section 230(c)(1) has no application to any interactive computer service's decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service.

3. Provide clearer guidance to courts, platforms, and users, on what content falls within (c)(2) immunity, particularly section 230(c)(2)'s "otherwise objectionable" language and its requirement that all removals be done in "good faith."

4. Specify that "responsible, in whole or in part, for the creation or development of information" in the definition of "information content provider," 47 U.S.C. § 230(f)(3), includes editorial decisions that modify or alter content, including but not limited to substantively contributing to, commenting upon, editorializing about, or presenting with a discernible viewpoint content provided by another information content provider.

[15] Adrian Shahbaz & Allie Funk, "Freedom on the Net 2019 Key Finding: Governments harness big data for social media surveillance," Freedom House, Social Media Surveillance, https://freedomhouse.org/report/freedom-on-the-net/2019/the-crisis-of-social-media/social-media-surveillance ("Social media surveillance refers to the collection and processing of personal data pulled from digital communication platforms, often through automated technology that allows for real-time aggregation, organization, and analysis of large amounts of metadata and content . . . . Advances in artificial intelligence (AI) have opened up new possibilities for automated mass surveillance.").

5. Mandate disclosure for internet transparency similar to that required of other internet companies, such as broadband service providers.

III. The Commission Should Act to Protect Free Speech Online

New regulations guiding the interpretation of section 230 are necessary to facilitate the provisions' interpretation in a way that best captures one of the nation's most important Constitutional freedoms. "Free speech is the bedrock of American democracy . . . . The freedom to express and debate ideas is the foundation for all of our rights as a free people."[16] Our democracy has long recognized that control of public discourse in the hands of too few stifles freedom of expression and risks undermining our political institutions. For centuries, Americans have taken action to maintain the free flow of information and ideas to ensure the fullest and most robust marketplace of ideas—from the Postal Service Act of 1792, one of Congress's first acts which established preferential rates for newspapers,[17] to nondiscrimination requirements for telegraphs and telephones,[18] to antitrust actions to ensure the free flow of news stories,[19] and to efforts to limit undue dominance in broadcast and cable media to guarantee the flow of information to television viewers.[20]

Yet today, free speech faces new threats. Many Americans follow the news, stay in touch with friends and family, and share their views on current events through social media and other

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[16] E.O. 13925, Section 1.
[17] Richard B. Kielbowicz, News in the Mail: The Press, Post Office and Public Information, 1700-1860s, at 33-34 (1989).
[18] Thomas B. Nachbar, The Public Network, 17 CommLaw Conspectus 67, 77 (2008). ("Nondiscriminatory access is . . . the order of the day for . . . telecommunications, and even cable television.").
[19] Associated Press v. United States, 326 U.S. 1 (1945).
[20] Turner Broad. Sys, Inc. v. F.C.C., 512 U.S. 622 (1994); F.C.C. v. National Citizens Comm. for Broad., 436 U.S. 775 (1978); Nat'l Broad. Co. v. United States, 319 U.S. 190 (1943); Time Warner Ent. Co. L.P. v. F.C.C., 240 F.3d 1126 (D.C. Cir. 2001).

online platforms. These platforms function, as the Supreme Court recognized, as a 21st century equivalent of the public square.[21] Provision and control of the public square is a public trust. Because it entails selecting which speech gets heard and by whom, social media can assimilate a collective conversation into a corporate voice with a corporate point of view. As the E.O. explains, "[w]hen large, powerful social media companies censor opinions with which they disagree, they exercise a dangerous power. They cease functioning as passive bulletin boards, and ought to be viewed and treated as content creators."[22] The Commission itself has previously recognized the importance of enabling "the widest possible dissemination of information from diverse and antagonistic sources" and "assuring that the public has access to a multiplicity of information sources" as internet regulations' essential goal.[23]

Unfortunately, large online platforms appear to engage in selective censorship that is harming our national discourse. The E.O. notes that "[t]ens of thousands of Americans have reported online platforms "flagging" content as inappropriate, even though it does not violate any stated terms of service" and is not unlawful. The platforms "mak[e] unannounced and unexplained changes to company policies that have the effect of disfavoring certain viewpoints and delet[e] content and entire accounts with no warning, no rationale, and no recourse."[24] FCC

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[21] Packingham v. North Carolina, 137 S. Ct. 1730, 1732 (2017) ("Social media . . . are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge.").
[22] E.O. 13925, Section 1.
[23] Federal Communications Commission, In the Matter of Protecting and Promoting the Open Internet, GN Docket No. 14-28, FCC 15-24, Report and Order on Remand, Declaratory Ruling, and Order, 2015 WL 1120110, *268 (¶ 545) (quoting Turner, 512 U.S. at 663).
[24] E.O. 13925, Section 1; Divino Group LLC, et al. v. Google LLC, et al., 5:19-cv-4749-VKD, Dkt #20 (2d Am. Compl.) at ¶¶ 119-123, 128-247 (N.D. Cal. (San Jose Division), dated Aug. 13, 2019) (class action complaint alleging YouTube censorship of LGBT+ content).

Commissioner Brendan Carr has remarked, "there's no question that [large social media platforms] are engaging in editorial conduct, that these are not neutral platforms."[25] Others have expressed shock that while large social media platforms will censor or fact-check constitutionally elected democratic leaders, many social media companies welcome and facilitate censorship by the Chinese Communist Party, thereby spreading disinformation and communist propaganda related to China's mass imprisonment of religious minorities, the origins of the COVID-19 pandemic, and the pro-democracy protests in Hong Kong.[26] Unfortunately, few academic empirical studies exist of the phenomenon of social media bias.

Much of social media's overarching influence and power stems from the immunities it enjoys under expansive interpretations of section 230 of the Communications Decency Act,[27] a provision Congress passed in 1996 at the beginning of the internet era. Many early cases, understandably protective of a nascent industry, read section 230's protections expansively. But, given the maturing internet economy and emergence of dominant social media platforms, the FCC should re-examine section 230, as well as other provisions of the Communications Act of 1934. The FCC should determine how section 230 can best serve its goals of promoting internet

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[25] Jan Jekielek, On Social Media Bias, Trump's Executive Order, and the China Data Threat: FCC Commissioner Brendan Carr, The Epoch Times, June 1, 2020, https://www.theepochtimes.com/on-social-media-bias-trumps-executive-order-and-the-china-data-threat-fcc-commissioner-brendan-carr_3372161.html.

[26] See, e.g., Sigal Samuel, China paid Facebook and Twitter to help spread anti-Muslim propaganda, Vox, Aug. 22, 2019, https://www.vox.com/future-perfect/2019/8/22/20826971/facebook-twitter-china-misinformation-ughiur-muslim-internment-camps; Ryan Gallagher, China's Disinformation Effort Targets Virus, Researcher Says, Bloomberg News, May 12, 2020, https://www.bloomberg.com/news/articles/2020-05-12/china-s-disinformation-campaign-targets-virus-and-businessman; James Titcomb & Laurence Dodds, Chinese state media use Facebook adverts to champion Hong Kong crackdown, June 8, 2020, https://www.telegraph.co.uk/technology/2020/06/08/chinese-state-media-use-facebook-adverts-champion-hong-kong/.

[27] 47 U.S.C. § 230.

diversity and a free flow of ideas, as well as holding dominant platforms accountable for their editorial decisions, in new market conditions and technologies that have emerged since the 1990s.[28]

IV. Relevant Facts and Data: Technological and Market Changes

Contemporary social media platforms have vastly different offerings, business models, relationships to users and customers, and, indeed, roles in national life than the early online bulletin boards that Prodigy and AOL offered in 1996. The FCC should recognize that the liability protections appropriate to internet firms in 1996 are different because modern firms have much greater economic power, play a bigger, if not dominant, role in American political and social discourse, and, with machine learning and other artificial techniques, have and exercise much greater power to control and monitor content and users.

CompuServe, Prodigy, America Online, and their competitors had fundamentally different business models from modern social media companies.[29] They had proprietary server banks, and their business model was to charge consumers for access, with significant surcharges

[28] See, e.g., Cubby, Inc. v. CompuServe Inc., 776 F.Supp. 135 (S.D.N.Y. 1991) (addressing CompuServe's 1990 service providing various online subscriber forums for certain groups).
[29] Andrew Pollack, Ruling May Not Aid Videotex, N.Y. Times, Sept. 15, 1987, at D1, https://www.nytimes.com/1987/09/15/business/ruling-may-not-aid-videotex.html (last visited July 27, 2020) ("The Videotex Industry Association estimates that there are 40 consumer-oriented services, such as CompuServe and the Source, in the United States, with a total membership of 750,000.").

for use of social features.[30] They were not interoperable,[31] There was thus no online "general public" population about whom information could be known, nor were there business partners to whom information on members of the public could be aggregated and sold. Online services faced a competitive landscape.

Online services competed with one another by commissioning or developing their own games, chat systems, financial-markets reporting, news services, and in-network mail services.[32] As users paid to connect, and thus directly funded online services, most online services did not contain advertising. The online service business model was not significantly reliant on third-party content because access to proprietary content was at the heart of online services' marketing

[30] Id. ("It is unclear, for instance, to what extent the gateway will be able to tell consumers where to go for the information they desire . . . . Each information service has its own commands for information retrieval."); Michael J. Himowitz, A look at on-line services CompuServe and Prodigy, The Baltimore Sun, Jan. 17, 1994 ("CompuServe [costs] $8.95 per month . . . . Effective Feb. 6, rates for forums and extended services . . . are an additional $4.80 per hour at 1200 or 2400 Baud, $9.60 per hour at 9600 or 14,400 Baud . . . . Prodigy: Most popular plan charges $14.95 per month . . . Additional Plus hours [for use of bulletin boards and stock market prices] are $3.60 each.").

[31] Pollack, supra note 29 ("Each information service has its own commands for information retrieval. With a useful gateway [which did not yet exist], the user would need to know only one set of commands and the gateway would translate them."); David Bernstein, Interoperability: The Key to Cloud Applications, https://e.huawei.com/en/publications/global/ict_insights/hw_376150/feature%20story/HW_376286 (last visited July 19, 2020) ("[T]he original online services such as AOL, Prodigy, and CompuServe had no interoperability between them. Content posted on one service could not be consumed by a client connected to a different service. Email could not be sent from a user on one service to a user on another.").

[32] Joanna Pearlstein, MacWorld's Guide to Online Services, MacWorld, Aug. 1994, at 90 ("Core services include general, business, and sports news; computer forums and news; reference materials; electronic mail and bulletin boards; business statistics and data; games; shopping services; travel services; and educational reference material. Still, the different online services do have different emphases, so even though they all offer a range of basic services, they are not interchangeable.").

efforts.[33] The online services of the late 1990s ran online bulletin boards as a minor sideline and used volunteer moderators from the computer hobbyist community.[34] Their business model was based on fees for connection time and professional database access, not community content.

One result of this model was that monitoring users and their content was a burden and regulatory imposition. Zeran, a leading and widely cited case on moderation, reflects this understanding of the technology of that time.[35] The Zeran court took the view, which most section 230 cases accept, that "liability [for third-party posts] upon notice [by an offended

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[33] James Coats, Getting on-line with cyberspace heavyweights, Chicago Tribune, Feb. 28, 1993 at C8 ("GEnie's greatest value to me is that it serves as a gateway to the ultraexpensive Dow Jones News/Retrieval service. Typing DOWJONES on GEnie gets me access to hundreds of thousands of newspaper articles - but at a cost well above $2 a minute. Still, when I'm involved in personal research, it empowers me with access to more than 100 different newspapers, wire services and magazines . . . . A costly service [on CompuServe] called IQUEST, for example, gets you access to thousands of newspapers, magazines, books and other research materials. A magazine database lets you search hundreds of thousands of back issues of publications from Playboy to Foreign Policy. The catch is that each article you decide to read in full costs $1.50 . . . . Tremendous amounts of information about stocks and investing can be had as well, for a price. You can follow favorite stocks by BasicQuotes and seek out news by company. Much of the famous Standard and Poor's research data can be had on CompuServe's S&P Online. Most company filings with the Securities and Exchange Commission can be downloaded on a service called Disclosure. I make heavy use of CompuServe's Executive News Service, which gives me an electronic 'clipping service' providing each day's news about dozens of firms I follow for my job, as well as other topics . . . . But Delphi takes the Internet much further than the other boards, which confine Internet traffic to electronic mail. With Delphi you can actually hook your home computer up with mainframes and minicomputers all around the world and read and download an almost unimaginably diverse wealth of files.").

[34] Catherine Buni & Soraya Chemaly, The Secret Rules of the Internet: the murky history of moderation, and how it's shaping the future of free speech, The Verge (April 13, 2016), https://www.theverge.com/2016/4/13/11387934/internet-moderator-history-youtube-facebook-reddit-censorship-free-speech (last visited July 19, 2020) ("Moderation's initially haphazard, laissez-faire culture has its roots here. Before companies understood how a lack of moderation could impede growth and degrade brands and community, moderators were volunteers; unpaid and virtually invisible. At AOL, moderation was managed by a Community Leader program composed of users who had previously moderated chat rooms and reported 'offensive' content. They were tasked with building 'communities' in exchange for having their subscription fees waived. By 2000, companies had begun to take a more proactive approach.").

[35] Zeran v. Am. Online, Inc., 129 F.3d 327 (4th Cir. 1997).

viewer] reinforces service providers' incentives to restrict speech and abstain from self-regulation."[36] The court went on to explain that online services cannot possibly take responsibility for third-party content due to its volume; as such, online services will simply prohibit all such content unless they are protected from liability for it. In the court's words:

> "If computer service providers were subject to distributor liability, they would face potential liability each time they receive notice of a potentially defamatory statement—from any party, concerning any message. Each notification would require a careful yet rapid investigation of the circumstances surrounding the posted information, a legal judgment concerning the information's defamatory character, and an on-the-spot editorial decision whether to risk liability by allowing the continued publication of that information. Although this might be feasible for the traditional print publisher, the sheer number of postings on interactive computer services would create an impossible burden in the Internet context."[37]

However, today's social media companies have adopted a different business model. Rather than provide database access, like Prodigy did, social media offers primarily third-party content.[38] Rather than charge fees, social media platforms profile users in order to categorize

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[36] Id. at 333.
[37] Id.
[38] Facebook Investor Relations, https://investor.fb.com/resources/default.aspx (last visited July 19, 2020) ("Founded in 2004, Facebook's mission is to give people the power to build community and bring the world closer together. People use Facebook to stay connected with friends and family, to discover what's going on in the world, and to share and express what matters to them."); Twitter Investor Relations, https://investor.twitterinc.com/contact/faq/default.aspx (last visited July 19, 2020) ("What is Twitter's mission statement? The mission we serve as Twitter, Inc. is to give everyone the power to create and share ideas and information instantly without barriers. Our business and revenue will always follow that mission in ways that improve – and do not detract from – a free and global conversation."); Google, Our Approach to Search, https://www.google.com/search/howsearchworks/mission/ (last visited July 19, 2020) ("Our company mission is to organize the world's information and make it universally accessible and useful."); YouTube Mission Statement, https://www.youtube.com/about/ (last visited July 19, 2020) ("Our mission is to give everyone a voice and show them the world. We believe that everyone deserves to have a voice, and that the world is a better place when we listen, share and build community through our stories."); Matt Buchanan, Instagram and the Impulse to Capture Every Moment, The New Yorker, June 20, 2013, https://www.newyorker.com/tech/annals-of-technology/instagram-and-the-impulse-to-capture-every-moment (last visited July 27, 2020)

them and connect them to advertisers and other parties interested in user information.[39] Online platforms like Twitter, Facebook, and YouTube have content moderation at the heart of their business models. Unlike the early internet platforms, they have invested immense resources into both professional manual moderation and automated content screening for promotion, demotion, monetization, and removal.[40]

("When I think about what Instagram is, I think about moments," said Kevin Systrom, the photo-sharing service's co-founder and C.E.O. "Our mission is to capture and share the world's moments.").

[39] Len Sherman, Why Facebook Will Never Change Its Business Model, Forbes.com, Apr, 16, 2018, https://www.forbes.com/sites/lensherman/2018/04/16/why-facebook-will-never-change-its-business-model/#7cdac11c64a7 (last visited July 27, 2020) ("By now, it's widely understood that Facebook's voracious appetite for user data is driven by their business model which charges advertisers for access to precisely targeted segments of their massive consumer database. No one knows more about more consumers than Facebook"); Twitter and Facebook have differing business models, The Economist, June 6, 2020, https://www.economist.com/business/2020/06/04/twitter-and-facebook-have-differing-business-models (last visited July 27, 2020) ("At first blush, Twitter and Facebook look similar. Each is a social network, connecting users online and presenting them with content in a 'feed', a never-ending list of posts, pictures and videos of pets. Each makes money by selling advertising, and thus has an interest in using every trick to attract users' attention. And each employs gobbets of data gleaned from users' behaviour to allow advertisers to hit targets precisely, for which they pay handsomely"); Enrique Dans, Google Vs. Facebook: Similar Business Models, But With Some Very Big Differences, Forbes.com, Feb. 2, 2019, https://www.forbes.com/sites/enriquedans/2019/02/02/google-vs-facebook-similar-business-models-but-with-some-very-big-differences/#6ab9408541ef (last visited July 27, 2020) ("Google does not sell my data or pass it on to any third party, it simply allows that third party to display an advertisement to a segment of its database that includes me, based on certain variables . . . . What is the result of Google knowing about us and our online interests? We receive ads that largely reflect those interests and we still have some control over what we see.").

[40] Zoe Thomas, Facebook content moderators paid to work from home, BBC.com, Mar. 18, 2020, https://www.bbc.com/news/technology-51954968 (last visited July 27, 2020) ("Facebook has approximately 15,000 content moderators in the US, who are hired by third-party contracting companies"); Elizabeth Dwoskin, et al., Content moderators at YouTube, Facebook and Twitter see the worst of the web — and suffer silently, Washington Post, July 25, 2019, https://www.washingtonpost.com/technology/2019/07/25/social-media-companies-are-outsourcing-their-dirty-work-philippines-generation-workers-is-paying-price/ (last visited July 27, 2020) ("In the last couple of years, social media companies have created tens of thousands of jobs around the world to vet and delete violent or offensive content . . . ."); Shannon Bond, Facebook, YouTube Warn Of More Mistakes As Machines Replace Moderators, National Public

Understanding how new entrants can or cannot participate in these intermediary markets is therefore key in understanding appropriate liability regimes; this is particularly important because liability shields can deter entrance. Market observers have significant concerns about barriers to entrance for new social media companies as well as social media's role with other edge providers in creating mediation markets. It is no secret that today's online platforms exist in highly concentrated markets.[41] Moreover, the relationship between social media and their adjacent markets is unclear, with mergers and other agreements having the potential for unexpected anticompetitive results.[42] Social media firms also demonstrate network effects and other barriers to entry, which frequently lead to weaker competition.[43] This lack of competition is particularly troubling given the decrease of new entrants documented in the broader economy.[44]

Section 230 was designed to assist the nascent internet industry. Pivotal judicial decisions, such as Zeran, interpreted ambiguous language in section 230 broadly, but at a time when different cost structures, business models, and markets prevailed. Given the rapidly

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Radio, March 31, 2020, https://www.npr.org/2020/03/31/820174744/facebook-youtube-warn-of-more-mistakes-as-machines-replace-moderators (last visited July 27, 2020) ("Facebook, YouTube and Twitter are relying more heavily on automated systems to flag content that violate their rules . . . . Tech companies have been saying for years that they want computers to take on more of the work of keeping misinformation, violence and other objectionable content off their platforms. Now the coronavirus outbreak is accelerating their use of algorithms rather than human reviewers.").

[41] Justin Haucap & Ulrich Heimeshoff, Google, Facebook, Amazon, eBay: Is the Internet driving competition or market monopolization? 11 Int. Econ. Policy 49–61 (2014).

[42] Carl Shapiro, Protecting Competition in the American Economy: Merger Control, Tech Titans, Labor Markets. 33(3) Journal of Economic Perspectives 69 (2019), available at http://faculty.haas.berkeley.edu/shapiro/protectingcompetition.pdf.

[43] Steven Berry, Martin Gaynor & Fiona Scott Morton, Do Increasing Markups Matter? Lessons from Empirical Industrial Organization, 33(3) Journal of Economic Perspectives 44 (2019).

[44] Germán Gutiérrez & Thomas Philippon, The Failure of Free Entry. NBER Working Paper No. 26001 (June 2019), available at https://www.nber.org/papers/w26001.pdf.

changing markets and relationship between market structure and optimal liability rules, NTIA urges the FCC to re-examine section 230 and work towards transparency in these markets.

V. The Authority and Need for Issuing Regulations for Section 230

This section sets forth the FCC's authority to issue regulations to interpret section 230 and shows how regulations are necessary to resolve the statute's ambiguities that the E.O. identified. This section further explains how the FCC has jurisdiction to issue regulations, outlines the background and history of section 230, explains its structure, and shows how courts have relied upon its ambiguities to make overly expansive interpretations.

Finally, it examines how the section's ambiguities should be resolved. Specifically, NTIA respectfully requests the FCC to:

- clarify the relationship between 230(c)(1) and (c)(2);
- explain the meaning of "good faith" and "otherwise objectionable" in section 230(c)(2);
- specify how the limitation on the meaning of "interactive computer service" found in section 230(f)(2) should be read into section 230(c)(1); and,
- explicate the meaning of "treated as a speaker or publisher" in section 230(c)(1).

A. The Commission's Power to Interpret Section 230 of the Communications Decency Act

Section 201(b) of the Communications Act (Act) empowers the Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out this chapter."[45] Under this authority, the FCC should promulgate rules to resolve ambiguities in Section 230. The Supreme Court has confirmed that "the grant in section 201(b) means what it

[45] 47 U.S.C. § 201(b).

says: The FCC has rulemaking authority to carry out the 'provisions of this Act.'" Section 230, in turn, was incorporated into the Act – in the same portion of the Act, Title II, as section 201(b) – by the Telecommunications Act of 1996 (1996 Act). The fact that section 230 was enacted after section 201(b) is of no consequence; the Supreme Court repeatedly has held that the Commission's section 201(b) rulemaking power extends to all subsequently enacted provisions of the Act, specifically identifying those added by the Telecommunications Act of 1996.[46] Thus, the Commission has authority under section 201(b) to initiate a rulemaking to implement section 230. That broad rulemaking authority includes the power to clarify the language of that provision, as requested in the petition.

The Commission has authority to implement section 230 through regulation even if this section was added to the 1934 Act through the amendments in the Telecommunications Act of 1996. It does not matter if the provision specifically mentions or contemplates FCC regulation. For instance, section 332(c)(7), which was also added to the Act by the 1996 Act, limits State and local decision-making on the placement, construction, or modification of certain wireless service facilities. The section makes no mention of FCC authority, only alluding to the Commission in passing and giving it no role in the provision's implementation. The Supreme Court nonetheless, upheld Commission's authority to issue regulations pursuant to section

[46] AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366, 378 (1999) ("We think that the grant in § 201(b) means what it says: The FCC has rulemaking authority to carry out the "provisions of this Act," which include §§ 251 and 252, added by the Telecommunications Act of 1996"); City of Arlington v. FCC, 668 F.3d 229, 250 (5th Cir. 2012), aff'd, 569 U.S. 290 (2013) ("Section 201(b) of that Act empowers the Federal Communications Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out [its] provisions. Of course, that rulemaking authority extends to the subsequently added portions of the Act.").

332(c)(7) for the simple reason that it was codified within the 1934 Act, and section 201(b) empowers the Commission to promulgate rules interpreting and implementing the entire Act.[47]

Similarly, in Iowa Utilities, the Supreme Court ruled that the FCC had rulemaking authority to implement sections 251 and 252 of the Act.[48] As with section 332, these sections did not explicitly grant the Commission power over all aspects of their implementation, arguably excluding intrastate and other areas. Nonetheless, the Court ruled that "§ 201(b) explicitly gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies."[49] These two decisions, and their underlying rationales, compel the same result for a Commission rulemaking to interpret section 230, and the rationale is simple and inarguable: if Congress chooses to codify a section into the 1934 Communications Act, then section 201(b) gives the FCC the power to clarify and implement it through regulation.

Neither section 230's text, nor any speck of legislative history, suggests any congressional intent to preclude the Commission's implementation. This silence further underscores the presumption that the Commission has power to issue regulations under section 230. As the Fifth Circuit noted with respect to section 332(c)(7), "surely Congress recognized that it was legislating against the background of the Communications Act's general grant of rulemaking authority to the FCC."[50] Accordingly, if Congress wished to exclude the Commission from the interpretation of section 230, "one would expect it to have done so explicitly." Congress did not do so and, as was the case for section 332(c)(7), that decision

[47] City of Arlington, 569 U.S. at 293 ("Of course, that rulemaking authority [of section 201(b)] extends to the subsequently added portions of the Act").
[48] Iowa Util. Bd., 525 U.S. at 378-87.
[49] Iowa Util. Bd., 525 U.S. at 380.
[50] Arlington, 668 F.3d at 250.

opens an ambiguity in section 230 that the Commission may fill pursuant to its section 201(b) rulemaking authority.

B. Background to Section 230

Section 230 reflects a congressional response to a New York state case, Stratton Oakmont, Inc. v. Prodigy Servs. Co., decided in 1995.[51] In Stratton Oakmont, a New York trial court reasoned that Prodigy had become a "publisher" under defamation law because it voluntarily deleted some messages from its message boards "on the basis of offensiveness and 'bad taste,'" and was liable for the acts of its agent, the "Board Leader" of the message board, who it had hired to monitor postings on its bulletin board. The court held that Prodigy, having undertaken an affirmative duty to remove content, therefore was legally responsible for failing to remove an allegedly defamatory posting.[52] The U.S. Court of Appeals for the Ninth Circuit explained that: "[t]he Stratton Oakmont court concluded that when a platform engages in content

[51] Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC, 521 F.3d 1157, 1163 (9th Cir. 2008) ("Section 230 was prompted by a state court case holding Prodigy responsible for a libelous message posted on one of its financial message boards"); Barnes v. Yahoo!, Inc., 570 F.3d 1096, 1101 (9th Cir. 2009) ("This is not surprising, because, as we and some of our sister circuits have recognized, Congress enacted the Amendment in part to respond to a New York state court decision, Stratton Oakmont, [citations omitted,] which held that an internet service provider could be liable for defamation."); Barrett v. Rosenthal, 40 Cal. 4th 33, 44, 146 P.3d 510, 516 (2006) ("The legislative history indicates that section 230 was enacted in response to an unreported New York trial court case."); Sen. Rep. No. 104-230, 2d. Session at 194 (1996) ("One of the specific purposes of [section 230] is to overrule Stratton Oakmont v. Prodigy and any other similar decisions"); see also H.R. Conf. Rep. No. 104-458, at 208 ("The conferees believe that [decisions like Stratton Oakmont] create serious obstacles to the important federal policy of empowering parents to determine the content of communications their children receive through interactive computer services"); 141 Congressional Record H8469–H8470 (daily ed., June 14, 1995) (statement of Rep. Cox, referring to disincentives created by the Stratton Oakmont decision); Blumenthal v. Drudge, 992 F. Supp. 44, 52 n.13 (D.D.C. 1998) ("the legislative history makes clear that one of the primary purposes of Section 230 was to overrule the Stratton Oakmont decision").

[52] Stratton Oakmont, 1995 WL 323720 at *4.

moderation, or 'some voluntary self-policing,' the platform becomes 'akin to a newspaper publisher, and thus responsible for messages on its bulletin board that defamed third parties.'"[53]

Stratton Oakmont applied established tort law, which makes "publishers" liable for defamatory material.[54] Traditionally, tort law defines "publication" as simply the "communication intentionally or by a negligent act to one other than the person defamed."[55] But because the publication element of a defamation claim can also be satisfied when someone unreasonably fails to remove a communication exhibited via means in his possession or control, the Stratton Oakmont court concluded that Prodigy's content moderation or "voluntary self-policing" of the bulletin board rendered Prodigy a publisher of a defamatory statement on its board. Therefore, Prodigy was liable as a publisher.[56]

Stratton Oakmont distinguishes an earlier case, Cubby, Inc. v. CompuServe, Inc.,[57] which ruled an internet bulletin board was not the publisher of material on its bulletin board. The key distinguishing factor was that in Cubby, CompuServe did not moderate postings. The court ruled that CompuServe was not a publisher, but rather what tort law terms a "distributor," i.e., one "who merely transmit[s] defamatory content, such as news dealers, video rental outlets,

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[53] Fair Hous. Council, 521 F.3d at 1163.
[54] Barnes, 570 F.3d at 1104, citing W. Page Keeton, et al., Prosser and Keeton on the Law of Torts § 113, at 799 (5th ed. 1984) ("[E]veryone who takes part in the publication, as in the case of the owner, editor, printer, vendor, or even carrier of a newspaper is charged with publication."); see also Cianci v. New Times Publ'g Co., 639 F.2d 54, 60–61 (2d Cir.1980) (noting the "black-letter rule that one who republishes a libel is subject to liability just as if he had published it originally").
[55] Restatement (Second) of Torts § 577.
[56] Stratton Oakmont, 1995 WL 323710 at *5 ("PRODIGY's conscious choice, to gain the benefits of editorial control, has opened it up to a greater liability than CompuServe and other computer networks that make no such choice."); Barnes, 570 F.3d at 1102 ("publication involves reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content"); see Rodney A. Smolla, Law of Defamation § 4:77 (2d ed., 1999).
[57] Cubby, 776 F.Supp. 135.

bookstores, libraries, and other distributors and vendors."[58] "Distributors" are subject to liability "if, but only if, they know or have reason to know of the content's defamatory character."[59] Thus, publishers had strict liability for materials they published, whereas distributors only had liability for publishing defamation with actual or constructive knowledge of its defamatory character.[60] The Stratton Oakmont court reasoned that, in Cubby, CompuServe "had no opportunity to review the contents of the publication at issue before it was uploaded into CompuServe's computer banks," and, therefore, CompuServe had no liability for defamatory posts on platforms that it owned and controlled as distributor.[61]

While following established common law tort rules, the Stratton Oakmont and Cubby cases presented internet platforms with a difficult choice: voluntarily moderate unlawful or obscene content and thereby become liable for all messages on their bulletin boards, or do nothing and allow unlawful and obscene content to cover their bulletin boards unfiltered. In litigation, Prodigy claimed that the "sheer volume" of message board postings it received—by our current standards a humble "60,000 a day"—made manually reviewing every message impossible. If forced to choose between taking responsibility for all messages and deleting no messages at all, it would take the latter course.[62] Thus, given the technological differences between an internet platform and a bookstore or library, the former's ability to aggregate a much greater volume of information, traditional liability rules became strained. Tort law risked dis-incentivizing platforms from editing or moderating any content for fear they would become liable for all third-party content.

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[58] Smolla § 4:92.
[59] Restatement (Second) of Torts § 581(1) (1977).
[60] Prosser, supra note 54, § 113 at 803.
[61] Stratton Oakmont, 1995 WL 323710 at *2-3.
[62] Stratton Oakmont, 1995 WL 323710 at *3.

Congress intended section 230 to address this difficult liability problem, but nothing in the law's history, purpose or text allows for the conclusion that internet platforms should avoid all responsibility for their own editing and content-moderating decisions. Indeed, section 230 was originally titled the "Online Family Empowerment" amendment to the Communications Decency Act, which was titled, "protection for private blocking and screening of offensive material."[63] Responding to pornography and obscene material on the web, Congress designed section 230 to encourage platforms to moderate specific types of content, mostly related to sexual material inappropriate to minors. Congress did not intend a vehicle to absolve internet and social media platforms—which, in the age of dial-up internet bulletin boards, such as Prodigy, did not exist—from all liability for their editorial decisions.

Representatives Christopher Cox and Ron Wyden floated the bill that became section 230 as an alternative to Senator J. James Exon's bill that criminalized the transmission of indecent material to minors.[64] In public comments, Representative Cox explained that the section 230 would reverse Stratton Oakmont and advance the regulatory goal of allowing families greater power to control online content.[65] The final statute reflected his stated policy: "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

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[63] Telecommunications Act of 1996, Pub. L. No. 104-104, title V, Sec. 509 (1996).
[64] Robert Cannon, The Legislative History of Senator Exon's Communications Decency Act: Regulating Barbarians on the Information Superhighway, 49 Fed. Comm. L.J. 51 (1996); Felix T. Wu, Collateral Censorship and the Limits of Intermediary Immunity, 87 Notre Dame L. Rev. 293, 316 (2011); 141 Cong. Rec. H8468-69 (daily ed. Aug. 4, 1995); Ashcroft v. Am. Civil Liberties Union, 535 U.S. 564, 564 (2002) ("[T]he Communications Decency Act reflected Congress's response to the proliferation of pornographic, violent and indecent content on the web Congress' first attempt to protect children from exposure to pornographic material on the Internet.").
[65] See 141 Cong. Rec. H8469-70 (daily ed. Aug. 4, 1995) (statement of Rep. Cox).

services."[66] The comments in the Congressional record from supporting congressmen and women—and it received strong bi-partisan support—reveal an understanding that the Online Family Empowerment amendment, now codified as section 230, as a non-regulatory approach to protecting children from pornography,[67] intended to provide incentives for "Good Samaritan" blocking and screening of offensive material.

C. Section 230(c)'s Structure

To further these goals, Congress drafted the "Good Samaritan" exception to publisher liability. Section 230(c)(1) has a specific focus: it prohibits "treating" "interactive computer services," i.e., internet platforms, such as Twitter or Facebook, as "publishers." But, this provision only concerns "information" provided by third parties, i.e., "another internet content provider"[68] and does not cover a platform's own content or editorial decisions.

The text of section 230(c)(1) states:

(c) Protection for "Good Samaritan" blocking and screening of offensive material:

(1) Treatment of publisher or speaker

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[66] 47 U.S.C. § 230(b)(3).

[67] See 141 Cong. Rec. H8470 (1995) (statement of Rep. White) ("I want to be sure we can protect [children] from the wrong influences on the Internet. But . . . the last person I want making that decision is the Federal Government. In my district right now there are people developing technology that will allow a parent to sit down and program the Internet to provide just the kind of materials that they want their child to see. That is where this responsibility should be, in the hands of the parent. That is why I was proud to cosponsor this bill that is what this bill does . . . ."); id., (statement of Rep. Lofgren) ("[The Senate approach] will not work. It is a misunderstanding of the technology. The private sector is out giving parents the tools that they have. I am so excited that there is more coming on. I very much endorse the Cox-Wyden amendment . . . .").

[68] 47 U.S.C. § 230(c)(1).

> No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

Section (c)(2) also has a specific focus: it eliminates liability for interactive computer services that act 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."[69]

Subsection (c)(2) governs the degree to which some of the platform's own content moderation decisions receive any legal protection, stating:

> "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 . . . ."

Here, Congress protects "any action . . . taken in good faith to restrict access to or availability of material." This means any social media platform's editorial judgment, moderation, content editing or deletion receives legal immunity, but the plain words of the provision indicate that this protection only covers decisions to restrict access to <u>certain types</u> of enumerated content. As discussed <u>infra</u>, these categories are quite limited and refer primarily to traditional areas of media regulation—also consistent with legislative history's concern that private regulation could create family-friendly internet spaces—and only actions within these categories taken in "good faith."

[69] 47 U.S.C. § 230(c)(2).

D. Expansive Court Rulings Tied to Early Platforms and Outdated Technology

Courts have recognized that "Congress enacted this provision for two basic policy reasons: to promote the free exchange of information and ideas over the Internet and to encourage voluntary monitoring for offensive or obscene material."[70] Congress intended sections 230(c)(1) and (c)(2) to protect platform openness and monitoring for certain specific issues. But, as discussed infra, ambiguous language in these statutes allowed some courts to broadly expand section 230's immunity from beyond its original purpose into a bar any legal action or claim that involves even tangentially "editorial judgment."[71] These subsequent protections established from "speaker or publisher" are overly broad and expansive, and often have absolutely nothing to do with the original harm section 230 was meant to remedy: relieving platforms of the burden of reading millions of messages to detect for defamation as Stratton Oakmont would require. Far and above initially intended viewer protection, courts have ruled section 230(c)(1) offers immunity from contracts,[72] consumer fraud,[73] revenge pornography,[74]

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[70] Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1122 (9th Cir. 2003).
[71] See, e.g., Sikhs for Justice "SFJ", Inc. v. Facebook, Inc., 144 F.Supp.3d 1088, 1094–1095 (N.D.Cal. 2015).
[72] Caraccioli v. Facebook, Inc., 167 F. Supp.3d 1056, 1064-66 (N.D. Cal. 2016) (dismissing breach of contract claim and Cal. Bus. & Prof. Code § 17200 unfair practices claim); Lancaster v. Alphabet Inc., No. 2016 WL 3648608, at *5 (N.D. Cal. July 8, 2016) (dismissing claim for breach of covenant of good faith and fair dealing); Jurin v. Google, Inc., 695 F. Supp. 2d 1117, 1122–23 (E.D. Cal. 2010) (dismissing claim for fraud); Fed. Agency of News LLC, et al. v. Facebook, Inc., 395 F. Supp. 3d 1295 (N.D. Cal. 2019) (dismissing discrimination claims under Title II and 42 U.S.C. § 1983); Obado v. Magedson, 43 Media L. Rep. 1737 (D.N.J. 2014) (dismissing claim for promissory estoppel), aff'd, 612 F. App'x 90 (3d Cir. 2015).
[73] See Gentry v. eBay, Inc., 121 Cal. Rptr. 2d 703 (Cal. Ct. App. 2002); Hinton v. Amazon, 72 F. Supp. 3d 685, 687 (S. D. Miss. 2014); Oberdorf v. Amazon, 295 F. Supp. 3d 496 (Mid. D. PA Dec. 21, 2017).
[74] Jones v. Dirty World Entertainment Holding LLC, 755 F.3d 398 (6th Cir. 2014); S.C. v. Dirty World LLC, 40 Media L. Rep. 2043 (W.D. Mo. 2012); Poole v. Tumblr, Inc., 404 F. Supp. 3d 637 (D. Conn. 2019).

anti-discrimination civil rights obligations,[75] and even assisting in terrorism.[76] By expanding protections beyond defamation, these courts extend to platforms a privilege to ignore laws that every other communications medium and business must follow and that are no more costly or difficult for internet platforms to follow than any other business.

The problem of overly expansive interpretations for section 230 is not merely hypothetical. Tens of thousands of Americans have reported, among other troubling behaviors, online platforms "flagging" content as inappropriate, even though it does not violate any stated terms of service; making unannounced and unexplained changes to company policies that have the effect of disfavoring certain viewpoints; and deleting content and entire accounts with no warning, no rationale, and no recourse. As FCC Commissioner Brendan Carr has observed, social media such as Twitter "punis[h] speakers based on whether it approves or disapproves of their politics."[77] One can hardly imagine a result more contrary to Congress's intent to preserve on the internet "a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity."[78]

Further, by making contract and consumer fraud claims concerning moderation unenforceable under section 230, courts seriously injure section 230's goal "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services."[79] Content moderation policies become, as FCC Commissioner Brendan

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[75] Sikhs for Justice "SFJ", Inc., 144 F. Supp.3d 1088, 1094-1095.
[76] Force, 934 F.3d at 57.
[77] Jon Brokin, Arstechnica, FCC Republican excitedly endorses Trump's crackdown on social media, May 29, 2020, https://arstechnica.com/tech-policy/2020/05/fcc-republican-excitedly-endorses-trumps-crackdown-on-social-media/.
[78] 47 U.S.C. § 230(a)(1).
[79] 47 U.S.C. § 230(b)(2).

Carr recently described Twitter's moderation policy, "free speech for me, but not for thee."[80] Further, if interactive computer services' contractual representations about their own services cannot be enforced, interactive computer services cannot distinguish themselves. Consumers will not believe, nor should they believe, representations about online services. Thus, no service can credibly claim to offer different services, further strengthening entry barriers and exacerbating competition concerns.

Much of this overly expansive reading of section 230 rests on a selective focus on certain language from Zeran, a case from the United States of Appeals for the Fourth Circuit.[81] The line of court decisions expanding section 230 in such extravagant ways relies on Zeran's reference to: "lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred."[82] This language arguably provides full and complete immunity to the platforms for their own publications, editorial decisions, content-moderating, and affixing of warning or fact-checking statements.[83] But, it is an erroneous interpretation, plucked from its surrounding context and thus removed from its more accurate meaning.

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[80] News Break, Brendan Carr Decries Twitter Censorship as 'Free Speech for Me, but Not for Thee, June 11, 2020, https://www.newsbreak.com/news/1582183608723/brendan-carr-decries-twitter-censorship-as-free-speech-for-me-but-not-for-thee.

[81] Zeran, 129 F.3d at 327.

[82] Zeran, 129 F.3d at 330.

[83] These lines from Zeran have led some courts to adopt the so-called three part section 230(c)(1) test: (1) whether Defendant is a provider of an interactive computer service; (2) if the postings at issue are information provided by another information content provider; and (3) whether Plaintiff's claims seek to treat Defendant as a publisher or speaker of third party content. Okeke v. Cars.com, 966 N.Y.S.2d 843, 846 (Civ. Ct. 2013), citing Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 564 F. Supp. 2d 544, 548 (E.D. Va. 2008), aff'd, 591 F.3d 250 (4th Cir. 2009). As the text explains, this so-called test errs in the third prong. The question is not whether the claim treats defendant as a publisher or speaker—after all, virtually every legal claim (contract, fraud, civil rights violations) would do so. The question is whether liability is

In fact, the quotation refers to third party's exercise of traditional editorial function—not those of the platforms. As the sentence in Zeran that is immediately prior shows, section 230 "creates a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service." In other words, the liability from which section 230(c)(1) protects platforms is that arising from the content that the third-party posts—i.e. the "information" posted by "another information provider" and those information providers' editorial judgments.

In light of the history of publisher and distributor liability law upon which section 230 draws, as well as its actual text, the best way to interpret the distinction between section 230(c)(1) and (c)(2) is as follows: Section 230(c)(1) applies to acts of omission—to a platform's failure to remove certain content. In contrast, section 230(c)(2) applies to acts of commission—a platform's decisions to remove. Section 230(c)(1) does not give complete immunity to all a platform's "editorial judgments."

E. Need for FCC Regulations: Ambiguities in Section 230

Section 230 contains a number of ambiguities that courts have interpreted broadly in ways that are harmful to American consumers, free speech, and the original objective of the statute. First, as discussed below, uncertainty about the interplay between section 230(c)(1) and (c)(2) has led many courts to a construction of the two provisions that other courts consider to be anomalous or lead to rendering section 230(c)(2) superfluous. Second, the interplay between section 230(c)(1) and (c)(2) does not make clear at what point a platform's moderation and presentation of content becomes so pervasive that it becomes an information content provider

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based on the content of third-party information. Requiring platforms to monitor the content of thousands of posts was the impetus behind section 230.

and, therefore, outside of section 230(c)(1)'s protections. Third, critical phrases in section 230(c)(2)— the "otherwise objectionable" material that interactive computer service providers may block without civil liability; and the "good faith" precondition for activating that immunity—are ambiguous on their face. And, with respect to the former, courts have posited starkly divergent interpretations that can only create uncertainty for consumers and market participants. Finally, what it means to be an "information content provider" or to be "treated as a publisher or speaker" is not clear in light of today's new technology and business practices. The Commission's expertise makes it well equipped to address and remedy section 230's ambiguities and provider greater clarity for courts, platforms, and users.

1. The Interaction Between Subparagraphs (c)(1) and (c)(2)

Ambiguity in the relationship between subparagraphs (c)(1) and (c)(2) has resulted in courts reading section 230(c)(1) in an expansive way that risks rendering (c)(2) a nullity. Numerous district court cases have held that section 230(c)(1) applies to removals of content, not section 230(b)(2) with its exacting "good faith" standard."[84] For instance, in Domen v. Vimeo, a federal district court upheld the removal of videos posted by a religious groups' questioning a California law's prohibition on so-called sexual orientation change efforts (SOCE), and the law's effect on pastoral counseling. Finding the videos were "harassing," the court upheld their removal under both section 230(c)(1) and section (c)(2), ruling that these sections are co-extensive, rather than aimed at very different issues.[85] In doing so, the court rendered section

[84] Domen v. Vimeo, Inc., 433 F. Supp. 3d 592, 601 (S.D.N.Y. 2020); Lancaster v. Alphabet, Inc., 2016 WL 3648608 (N.D. Cal. July 28, 2016); Sikhs for Justice "SFJ", Inc., 144 F.Supp.3d 1088.
[85] Domen, 433 F. Supp. 3d at 601 ("the Court finds that Vimeo is entitled to immunity under either (c)(1) or (c)(2)").

230(c)(2) superfluous—reading its regulation of content removal as completely covered by section 230(c)(1)'s regulation of liability for user-generated third party content.

The Commission should promulgate a regulation to clarify the relationship between the two provisions so that section 230(c)(1) does not render section 230(c)(1) superfluous. To determine how these subparagraphs interact—or as E.O. 13925 specifically instructs: "to clarify and determine the circumstances under which a provider of an interactive computer service that restricts access to content in a manner not specifically protected by subparagraph (c)(2)(A) may also not be able to claim protection under subparagraph (c)(1),"[86] the FCC should determine whether the two subsections' scope is additive or not. While some courts have read section 230(c)(1) "broadly,"[87] few have provided any principled distinction between the two subsections.

NTIA urges the FCC to follow the canon against surplusage in any proposed rule.[88] Explaining this canon, the Supreme Court holds, "[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . . ."[89] The Court emphasizes that the canon "is strongest when an interpretation would render superfluous another part of the same statutory scheme."[90]

While some district courts, such as Domen discussed above, have ruled that section 230(c)(1) applies to content removal, which is section 230(c)(2)'s proper domain, those courts that have explicitly inquired into the proper relationship between the two subparagraphs have

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[86] E.O. 13925 § 2(b)(i).
[87] See Force, 934 F.3d at 64.
[88] Marx v. General Revenue Corp., 568 U.S. 371, 385 (2013).
[89] Corley v. United States, 556 U.S. 303, 314 (2009), quoting Hibbs v. Winn, 542 U.S. 88, 101 (2004).
[90] Marx, 568 U.S. at 386; see also Fair Hous. Council, 521 F.3d 1157 at 1167-68 (avoiding superfluity in interpret the "developer" exception in Section 230(f)(3) of the CDA).

followed the surplusage canon—ruling that the provisions cover separate issues[91] and "address different concerns."[92] "Section 230(c)(1) is concerned with liability arising from information provided online," while "[s]ection 230(c)(2) is directed at actions taken by Internet service providers or users to restrict access to online information."[93] Thus, "[s]ection 230(c)(1) provides immunity from claims by those offended by an online publication, while section 230(c)(2) protects against claims by those who might object to the restriction of access to an online publication."[94] Courts have refused to "interpret[] the CDA . . . [to allow] the general immunity in (c)(1) [to] swallow[] the more specific immunity in (c)(2)" because subsection (c)(2) immunizes only an interactive computer service's "actions taken in good faith."[95]

NTIA suggests that the FCC can clarify this relationship between section 230(c)(1) and section 230(c)(2) by establishing the following points. First, the FCC should make clear that section 230(c)(1) applies to liability directly stemming from the information provided by third-party users. Section 230(c)(1) does not immunize a platforms' own speech, its own editorial decisions or comments, or its decisions to restrict access to content or its bar user from a platform. Second, section 230(c)(2) covers decisions to restrict content or remove users.

NTIA, therefore, requests that the Federal Communications Commission add the below Subpart E to 47 CFR Chapter I:

> **Subpart E. Interpreting Subsection 230(c)(1) and Its Interaction With Subsection 230(c)(2).**
> § 130.01

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[91] See, e.g., Zango, 568 F.3d at 1175 (holding that (c)(2) is a "different . . . statutory provision with a different aim" than (c)(1)).
[92] Barrett, 40 Cal. 4th 33.
[93] Id. at 49 (emphasis added).
[94] Id. (emphasis added).
[95] e-ventures Worldwide, LLC v. Google, Inc., (M.D. Fla. Feb. 8, 2017) 2017 U.S. Dist. LEXIS 88650, at *9.

As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

(a) 47 U.S.C. 230(c)(1) applies to an interactive computer service for claims arising from failure to remove information provided by another information content provider. Section 230(c)(1) has no application to any interactive computer service's decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service. Any applicable immunity for matters described in the immediately preceding sentence shall be provided solely by 47 U.S.C. § 230(c)(2).

(b) An interactive computer service is not a publisher or speaker of information provided by another information content provider solely on account of actions voluntarily taken in good faith to restrict access to or availability of specific material in accordance with subsection (c)(2)(A) or consistent with its terms of service or use.

2. The Meaning of Section 230(c)(2)

Section 230(c)(2)'s ambiguities include (1) how to interpret "otherwise objectionable" and (2) "good faith."

a. "Otherwise objectionable"

If "otherwise objectionable" means any material that any platform "considers" objectionable, then section 230(b)(2) offers de facto immunity to all decisions to censor content. And some district courts have so construed section 230(c)(2).[96] But, many courts recognize

[96] Domen v. Vimeo, Inc., 2020 U.S. Dist. L 7935 (S.D.N.Y. Jan. 15, 2020), appeal filed No 20-616 (Feb. 18, 2020) ("Section 230(c)(2) is focused upon the provider's subjective intent of what is 'obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable.' That section 'does not require that the material actually be objectionable; rather, it affords protection for blocking material "that the provider or user considers to be' objectionable."'); Langdon v. Google, Inc., 474 F. Supp. 2d 622, 631 (D. Del. 2007) ("Plaintiff argues there was no refusal to run his ads on the basis they were obscene or harassing, and that Defendants cannot create 'purported reasons for not running his ads.' He omits, however, reference to that portion of § 230 which provides immunity from suit for restricting material that is 'otherwise objectionable.'").

limiting principles. Many look to the statutory canon of ejusdem generis, which holds that catch-all phases at the end of a statutory lists should be construed in light of the other phrases.[97] In this light, section 230(c)(2) only applies to obscene, violent, or other disturbing matters.[98]

Understanding how the section 230(c)(2) litany of terms has proved difficult for courts in determining how spam filtering and filtering for various types of malware fits into the statutory framework. Most courts have ruled that "restrict[ing] access" to spam falls within the section

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[97] Washington State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler, 537 U.S. 371, 372 (2003) ("under the established interpretative canons of noscitur a sociis and ejusdem generis, where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar to those enumerated by the specific words").

[98] Darnaa, LLC v. Google, Inc., 2016 WL 6540452 at *8 (N.D. Cal. 2016) ("The context of § 230(c)(2) appears to limit the term to that which the provider or user considers sexually offensive, violent, or harassing in content."); Song Fi, Inc. v. Google, Inc., 108 F. Supp. 3d 876, 883 (N.D. Cal. 2015) ("First, when a statute provides a list of examples followed by a catchall term (or 'residual clause') like 'otherwise objectionable,' the preceding list provides a clue as to what the drafters intended the catchall provision to mean," citing Circuit City Stores v. Adams, 532 U.S. 105, 115 (2001)). This is the rationale for the canon of construction known as eiusdem generis (often misspelled ejusdem generis), which is Latin for 'of the same kind); National Numismatic v. eBay, 2008 U.S. Dist. LEXIS 109793, at *25 (M.D. Fla. Jul. 8, 2008) ("Section 230 is captioned 'Protection for 'Good Samaritan' blocking and screening of offensive material,' yet another indication that Congress was focused on potentially offensive materials, not simply any materials undesirable to a content provider or user"); Sherman v. Yahoo! Inc., 997 F. Supp. 2d 1129 (S.D. Cal. 2014) (text messages allegedly violate Telephone Consumer Protection Act; Yahoo! raised section 230(c)(2)(B) as a defense) ("The Court declines to broadly interpret 'otherwise objectionable' material to include any or all information or content. The Ninth Circuit has expressed caution at adopting an expansive interpretation of this provision where providers of blocking software 'might abuse th[e CDA] immunity to block content for anticompetitive purposes or merely at its malicious whim, under the cover of considering such material "otherwise objectionable" under § 230(c)(2)."); Goddard v. Google, Inc., 2008 U.S. Dist. LEXIS 101890 (N.D. Cal. Dec. 17, 2008) ('[i]t is difficult to accept . . . that Congress intended the general term "objectionable" to encompass an auction of potentially-counterfeit coins when the word is preceded by seven other words that describe pornography, graphic violence, obscenity, and harassment.' In the instant case, the relevant portions of Google's Content Policy require that MSSPs provide pricing and cancellation information regarding their services. These requirements relate to business norms of fair play and transparency and are beyond the scope of § 230(c)(2).").

230(c)(2) framework, although that is difficult perhaps to see as a textual matter.[99] Spam, though irritating and destructive of the online experience, does not fit clearly into the litany in section 230, at least as courts have understood this litany.

The spam cases have prompted courts to examine the thread that runs through the list in section 230. A recent Ninth Circuit case perceptively sees the challenge: On one hand, "decisions recognizing limitations in the scope of immunity [are] persuasive,"[100] and "interpreting the statute to give providers unbridled discretion to block online content would . . . enable and potentially motivate internet-service providers to act for their own, and not the public, benefit."[101] In addition, the court did recognize that "the specific categories listed in § 230(c)(2) vary greatly: [m]aterial that is lewd or lascivious is not necessarily similar to material that is violent, or material that is harassing. If the enumerated categories are not similar, they provide little or no assistance in interpreting the more general category. We have previously recognized this concept."[102]

Yet, in fact, the original purpose of the Communications Decency Act—"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

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[99] Asurvio LP v. Malwarebytes Inc., 2020 U.S. Dist. LEXIS 53906 (N.D. Cal. Mar. 26, 2020) (allegation that M is wrongfully classifying A's software as malware); 4PC Drivers Headquarters, LP v. Malwarebytes Inc., 371 F. Supp. 3d 652 (N.D. Cal. 2019) (malware); Shulman v. FACEBOOK.com, 2018 U.S. Dist. LEXIS 113076 (D.D.C. Jul. 9, 2018) (spam); Holomaxx Technologies v. Microsoft Corp., 783 F. Supp. 2d 1097 (N.D. Cal. 2011) (spam); Smith v. Trusted Universal Stds. in Elec. Transactions, Inc., 2010 U.S. Dist. LEXIS 43360 (D. N.J. May 4, 2010) (deletion of spam); e360insight v. Comcast Corp., 546 F. Supp. 2d 605 (N.D. Ill. 2008) (spam); Zango v. Kapersky Lab., 568 F.3d 1169 (9th Cir. 2009) (competitive blocking software).

[100] Enigma Software Grp. USA, v. Malwarebytes, Inc., 946 F.3d 1040, 1050 (9th Cir. 2019).

[101] Id.

[102] Id. at 1051.

material"[103]—suggests that the thread that combines section 230(c)(2)'s concepts are those materials that were objectionable in 1996 and for which there was already regulation—regulation which Congress intended section 230 to provide incentives for free markets to emulate.

The first four adjectives in subsection (c)(2), "obscene, lewd, lascivious, filthy," are found in the Comstock Act as amended in 1909.[104] The Comstock Act prohibited the mailing of "every obscene, lewd, or lascivious, and every filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character."[105] In addition, the CDA used the terms "obscene or indecent," prohibiting the transmission of "obscene or indecent message."[106] The Act's second provision declared unconstitutional in Reno v. ACLU, section 223(d), prohibits the knowing sending or displaying of "any comment, request, suggestion, proposal, image, or other communication that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs, regardless of whether the user of such service placed the call or initiated the communication."[107] This language of "patently offensive . . ." derives from the definition of indecent speech set forth in the Pacifica decision and which the FCC continues to regulate to this day.[108]

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[103] 47 U.S.C. § 230(a)(4).

[104] Section 3893 of the Revised Statutes made by section 211 of the Criminal Code, Act of March 4, 1909, c. 321, 35 Stat. 1088, 1129; United States v. Limehouse, 285 U.S. 424, 425 (1932) (stating that "Section 211 of the Criminal Code (18 USCA § 334) declares unmailable 'every obscene, lewd, or lascivious, and every filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character") (additional citation added). The phrase is repeated in numerous state statutes.

[105] Id. at 424-6.

[106] 47 U.S. § 223(a) (May 1996 Supp.).

[107] 521 U.S. 844 (1997).

[108] FCC v. Pacifica Found., 438 U.S. 726, 732 (1978) ("patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs").

The next two terms in the list "excessively violent" and "harassing" also refer to typical concerns of communications regulation which were, in fact, stated concerns of the CDA itself. Congress and the FCC have long been concerned about the effect of violent television shows, particularly upon children; indeed, concern about violence in media was an impetus of the passage of the Telecommunications Act of 1996, of which the CDA is a part. Section 551 of the Act, entitled Parental Choice in Television Programming, requires televisions over a certain size to contain a device, later known at the V-chip. This device allows viewers to block programming according to an established rating system.[109] The legislation led to ratings for broadcast television that consisted of violent programming.[110] The FCC then used this authority to require televisions to allow blocking technology.[111]

And, of course, Congress and the FCC have long regulated harassing wire communications. Section 223, Title 47, the provision which the CDA amended and into which the CDA was in part codified, is a statute that prohibits the making of "obscene or harassing"

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[109] 47 U.S.C. § 303(x). See Technology Requirements to Enable Blocking of Video Programming Based on Program Ratings, 63 Fed. Reg. 20, 131 (Apr. 23, 1998) ("[T]he Commission is amending the rules to require . . . technological features to allow parents to block the display of violent , sexual, or other programming they believe is harmful to their children. These features are commonly referred to as 'v-chip' technology."). Finding that "[t]here is a compelling governmental interest in empowering parents to limit the negative influences of video programming that is harmful to children," Congress sought to "provid[e] parents with timely information about the nature of upcoming video programming and with the technological tools" to block undesirable programming by passing the Telecommunications Act of 1996 (the "Telecommunications Act").

[110] FCC News, Commission Finds Industry Video Programming Rating System Acceptable, Report No. GN 98-3 (Mar. 12, 1998), available at https://transition.fcc.gov/Bureaus/Cable/News_Releases/1998/nrcb8003.html.

[111] Amy Fitzgerald Ryan, Don't Touch That V-Chip: A Constitutional Defense of the Television Program Rating Provisions of the Telecommunications Act of 1996, 87 Geo. L.J. 823, 825 (1999), citing Lawrie Mifflin, TV Networks Plan Ratings System, Orange County Reg., Feb. 15, 1996, at A1.

telecommunications.[112] These harassing calls include "mak[ing] or caus[ing] the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number" or "mak[ing] repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication."[113] Roughly half of the States also outlaw "harassing" wire communications via telephone.[114] Congress enacted the Telephone Consumer Protection Act (TCPA), recently upheld in most part by the Supreme Court,[115] to ban "automated or prerecorded telephone calls, regardless of the content or the initiator of the message," that are considered "to be a nuisance and an invasion of privacy."[116]

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[112] 47 U.S.C. § 223.

[113] 47 U.S.C. § 223(a)(1)(D) & (E) (2012).

[114] See, e.g., (Arizona) Ariz. Rev. Stat. § 13-2916 ("It is unlawful for any person, with intent to terrify, intimidate, threaten or harass a specific person or persons, to do any of the following: 3. Otherwise disturb by repeated anonymous, unwanted or unsolicited electronic communications the peace, quiet or right of privacy of the person at the place where the communications were received."); (California) Cal. Pen. Code § 653m(b) ("Every person who, with intent to annoy or harass, makes repeated telephone calls or makes repeated contact by means of an electronic communication device, or makes any combination of calls or contact, to another person is, whether or not conversation ensues from making the telephone call or contact by means of an electronic communication device, guilty of a misdemeanor. Nothing in this subdivision shall apply to telephone calls or electronic contacts made in good faith or during the ordinary course and scope of business."); (Maryland) Md. Code Ann., Crim. Law § 3-804 ("A person may not use telephone facilities or equipment to make: (1) an anonymous call that is reasonably expected to annoy, abuse, torment, harass, or embarrass another; (2) repeated calls with the intent to annoy, abuse, torment, harass, or embarrass another"); (Oklahoma) 21 Okl. St. § 1172 ("It shall be unlawful for a person who, by means of a telecommunication or other electronic communication device, willfully either: 6. In conspiracy or concerted action with other persons, makes repeated calls or electronic communications or simultaneous calls or electronic communications solely to harass any person at the called number(s)").

[115] Barr v. Am. Ass'n of Political Consultants, 140 S. Ct. 2335 (2020) (upholding the Act except for its debt-collection exception).

[116] Telephone Consumer Protection Act of 1991, 105 Stat. 2394, 2395, codified at 15 U.S.C. § 6101.

Thus, the cases that struggled over how to fit spam into the list of section 230(c)(2) could simply have analogized spam as similar to harassing or nuisance phone calls.

The regulatory meanings, as understood in 1996 and used in the Communications Decency Act, itself, constitute the thread that unites the meanings of "obscene, lewd, lascivious, filthy, excessively violent, and harassing." All deal with issues involving media and communications content regulation intended to create safe, family environments. Compelling that conclusion is "the presumption of consistent usage—the rule of thumb that a term generally means the same thing each time it is used . . . [particularly for] terms appearing in the same enactment."[117] To ensure clear and consistent interpretations of the terms used in subsection 230(c)(2), NTIA requests, therefore, that the FCC add the below Subpart E to 47 CFR Chapter I:

> **Subpart E. Clarifying Subsection 230(c)(2).**
> § 130.02
> As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:
>
> **(a) "obscene," "lewd," "lascivious," and "filthy"**
> The terms "obscene," "lewd," "lascivious," and "filthy" mean material that:
> i. taken as a whole, appeals to the prurient interest in sex or portrays sexual conduct in a patently offensive way, and which, taken as a whole, does not have serious literary, artistic, political, or scientific value;
> ii. depicts or describes sexual or excretory organs or activities in terms patently offensive as measured by contemporary community standards; to the average person, applying contemporary community standards; or
> iii. signifies the form of immorality which has relation to sexual impurity, and have the same meaning as is given them at common law in prosecutions for obscene libel.
>
> **(b) "excessively violent"**
> The term "excessively violent" means material that:
> i. is likely to be deemed violent and for mature audiences according the Federal Communications Commission's V-chip regulatory regime and TV Parental Guidance, promulgated pursuant to Section 551 of the 1996

[117] United States v. Castleman, 572 U.S. 157, 174 (2014), citing IBP, Inc. v. Alvarez, 546 U.S. 21, 33–34 (2005) (Scalia, J., conc.).

Telecommunications Act, Pub. L. No. 104-104, § 551, 110 Stat. 139-42 (codified at 47 U.S.C. § 303; § 330(c)(4)); or

ii. constitutes or intends to advocate domestic terrorism or international terrorism, each as defined in 18 U.S.C. § 2331 ("terrorism").

(c) "harassing"

The term "harassing" means any material that:

i. that sent by an information content provider that has the subjective intent to abuse, threaten, or harass any specific person and is lacking in any serious literary, artistic, political, or scientific value;

ii. regulated by the CAN-SPAM Act of 2003, 117 Stat. 2699; or

iii. that is malicious computer code intended (whether or not by the immediate disseminator) to damage or interfere with the operation of a computer.

(d) "otherwise objectionable"

The term "otherwise objectionable" means any material that is similar in type to obscene, lewd, lascivious, filthy, excessively violent, or harassing materials.

b. "Good faith"

The phrase "good faith" in section 230(c) is also ambiguous. On one hand, most courts, in interpreting the phrase, have looked to pretext, dishonesty, or refusing to explain wrongful behavior when finding good faith or lack thereof in the removal of content. As the United States Court of Appeals for the Ninth Circuit explains, "unless § 230(c)(2)(B) imposes some good faith limitation on what a blocking software provider can consider 'otherwise objectionable' . . . immunity might stretch to cover conduct Congress very likely did not intend to immunize." Under the generous coverage of section 230(c)(2)(B)'s immunity language, a blocking software provider might abuse that immunity to block content for anticompetitive purposes or merely at its malicious whim, under the cover of considering such material "otherwise objectionable."[118] At the same time, some courts, focusing the words "the provider or user considers to be

[118] Zango, 568 F.3d at 1178 (Fisher, J., concurring). The Ninth Circuit has adopted Judge Fisher's reasoning. See Enigma, 946 F.3d at 1049.

obscene," see the provision's immunity available whenever an interactive computer service simply claims to consider the material as fitting within the provision's categories. Thus, "good faith" simply means the existence of some "subjective intent."[119]

Good faith requires transparency about content moderation disputes processes. In order to qualify for section 230(c)(2)'s immunity, a social media platform, or any interactive computer service, must demonstrate in a transparent way that when it takes action pursuant to section 230(c)(2), it provides adequate notice, reasoned explanation, or a meaningful opportunity to be heard."[120]

To ensure clear and consistent interpretation of the "good faith" standard, NTIA requests that the FCC further add the below to newly requested 47 CFR Chapter I Subchapter E Section 130.02:

> **(e) "good faith"**
> A platform restricts access to or availability of specific material (including, without limitation, its scope or reach) by itself, any agent, or any unrelated party in "good faith" under 47 U.S.C. § (c)(2)(A) if it:
>
> i. restricts access to or availability of material or bars or refuses service to any person consistent with publicly available terms of service or use that state plainly and with particularity the criteria the interactive computer service employs in its content-moderation practices, including by any partially or fully automated processes, and that are in effect on the date such content is first posted;
> ii. has an objectively reasonable belief that the material falls within one of the listed categories set forth in 47 U.S.C. § 230(c)(2)(A);
> iii. does not restrict access to or availability of material on deceptive or pretextual grounds, and does not apply its terms of service or use to restrict access to or availability of material that is similarly situated to material that the interactive computer service intentionally declines to restrict; and
> iv. supplies the interactive computer service of the material with timely notice describing with particularity the interactive computer service's reasonable factual basis for the restriction of access and a meaningful opportunity to respond, unless the interactive computer service has an objectively

[119] Domen, 433 F.Supp. 3d 592.
[120] E.O. 13925, Sec. 2(b).

reasonable belief that the content is related to criminal activity or such notice would risk imminent physical harm to others.

3. Section 230(c)(1) and 230(f)(3)

Section 230(c)(1) places "information content providers," i.e., entities that create and post content, outside its protections. This means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the internet, does not receive the statute's shield. Numerous cases have found that interactive computer service's designs and policies render it an internet content provider, outside of section 230(c)(1)'s protection. But the point at which a platform's form and policies are so intertwined with users' postings so as to render the platform an "information content provider" is not clear.

Courts have proposed numerous interpretations, most influentially in the Ninth Circuit in Fair Housing Council of San Fernando Valley v. Roommates.Com.[121] There, the court found that "[b]y requiring subscribers to provide the information as a condition of accessing its service, and by providing a limited set of pre-populated answers, Roommate becomes much more than a passive transmitter of information."[122] The court continued, "[w]e interpret the term 'development' as referring not merely to augmenting the content generally, but to materially contributing to its alleged unlawfulness. In other words, a website helps to develop unlawful content, and thus falls within the exception to section 230, if it contributes materially to the alleged illegality of the conduct."[123] But, this definition has failed to provide clear guidance, with courts struggling to define "material contribution."[124]

[121] Fair Hous. Council, 521 F.3d at 1166.
[122] Id.
[123] Id. at 1167–68 (emphasis added); see also Dirty World Entertainment, 755 F.3d at 411.
[124] See, e.g., People v. Bollaert, 248 Cal. App. 4th 699, 717 (2016).

Further, not all courts accept the material contribution standard. The Seventh Circuit concludes that "[a] company can, however, be liable for creating and posting, inducing another to post, or otherwise actively participating in the posting of a defamatory statement in a forum that that company maintains."[125] Other circuits conclude that a website becomes an information content provider by "solicit[ing] requests" for the information and then "pa[ying] researchers to obtain it."[126]

This confusion stems from the difference between the way an online bulletin board worked in the 1990s, which simply posted content, and how social media works today. As Federal Trade Commissioner Rohit Chopra explained, new social media shape and control information and online experience often as an expression of platforms' and their advertisers' goals rather than their users':

> "[Section 230] seeks to foster an environment where information and ideas can flourish. If a company is just helping move information from point A to point B, that company is just like the mail carrier or the telegraph company. That makes sense . . . . But the tech market has dramatically shifted in the decades since this law was enacted . . . . I would argue that once platforms started prioritizing their paid predictions, the content became more a reflection of advertisers targeting users, than users' own preferences."[127]

In light of modern technology, the FCC should clarify the circumstances under which an interactive computer service becomes an information content provider. Interactive computer services that editorialize particular user comments by adding special responses or warnings appear to develop and create content in any normal use of the words. Analogously, district

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[125] Huon v. Denton, 841 F.3d 733, 742 (7th Cir. 2016).
[126] FTC v. Accusearch Inc., 570 F.3d 1187, 1199–1200 (10th Cir. 2009).
[127] Rohit Chopra, Tech Platforms, Content Creators, and Immunity, American Bar Association, Section of Antitrust Law Annual Spring Meeting, Washington, D.C. (Mar. 28, 2019) (transcript available online at https://www.ftc.gov/system/files/documents/public_statements/1510713/chopra_-_aba_spring_meeting_3-28-19_0.pdf (last visited June 15, 2020)).

courts have concluded that when interactive computer services' "employees . . . authored comments," the interactive computer services would become content providers.[128] In addition, prioritization of content under a variety of techniques, particularly when it appears to reflect a particularly viewpoint, might render an entire platform a vehicle for expression and thus an information content provider.

To clarify when interactive computer services become information content providers through developing and creating content through the presentation of user-provided material, NTIA requests that the FCC add the below Subpart E to 47 CFR Chapter I:

> **Subpart E. Clarifying Subsection 230(f)(2).**
> § 130.03
> As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:
>
> For purposes of 47 U.S.C. § 230(f)(3), "responsible, in whole or in part, for the creation or development of information" includes substantively contributing to, modifying, altering, presenting or prioritizing with a reasonably discernible viewpoint, commenting upon, or editorializing about content provided by another information content provider.

4. "Treated as a Publisher or Speaker"

Finally, the ambiguous term "treated as a publisher or speaker" is a fundamental question for interpreting that courts in general have not addressed squarely. One of the animating concerns for section 230 was court decisions holding online platforms liable as publishers for third-party speech, when in fact they were merely passive bulletin boards. By prohibiting an interactive computer service from being "treated" as a publisher or speaker, therefore, section 230 could be interpreted as not converting non-publisher platforms into publishers simply because they passively transmit third-party content. That does not, however, mean that the

[128] Huon, 841 F.3d at 742.

statute meant to immunize online platforms when they actually act as publishers and exert significant control over the third-party speech and the message it conveys.

FCC Chairman Pai made a similar point by asking if selective content moderation based on ideology eventually becomes "editorial judgment":

> Are these tech giants running impartial digital platforms over which they don't exercise editorial judgment when it comes to content? Or do they in fact decide what speech is allowed and what is not and discriminate based on ideology and/or political affiliation? [129]

If content-moderating can never, no matter how extreme or arbitrary, become editorializing that no longer remains the "speech of another," then section 230(c)(1) will subsume section 230(c)(2) and eliminate liability for all interactive computer services' decisions to restrict content. Interpreting "speaker or publisher" so broadly is especially harmful when platforms are opaque and deceptive in their content-monitoring policies.

This concern is hardly theoretical, given the highly inconsistent, baffling, and even ideologically driven content moderating decisions that the large interactive computer services have made, at least according to numerous accounts. For instance, one interactive computer service made the editorial decision to exclude legal content pertaining to firearms,[130] content that was deemed acceptable for broadcast television,[131] thereby chilling the speech of a political candidate supportive of gun rights. Another interactive computer service has suppressed the

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[129] Ajit Pai, What I Hope to Learn from the Tech Giants, FCC Blog (Sept. 4, 2018), https://www.fcc.gov/news-events/blog/2018/09/04/what-i-hope-learn-tech-giants.
[130] Facebook, Inc., Facebook Prohibited Content: 7. Weapons, Ammunition, or Explosives, https://www.facebook.com/policies/ads/prohibited_content/weapons (last visited June 15, 2020).
[131] Maria Schultz, Facebook pulls ad from gun-toting Georgia candidate taking on Antifa: 'Big Tech censorship of conservatives must end', Fox News (June 6, 2020), https://www.foxnews.com/politics/facebook-pulls-ad-from-gun-toting-georgia-candidate-big-tech-censorship-of-conservatives-must-end.

speech of an American politician for "glorifying violence"[132] while permitting that of a foreign politician glorifying violence to pass without action,[133] as publicly noted by the FCC Chairman.[134] Still another interactive computer service, purporting to be a document repository and editing service,[135] deleted a controversial paper about a potential therapy for COVID-19,[136] stating simply that it was in violation of the site terms of service.[137] A major food-workers' union has objected to social media-implemented internal communication networks for companies, or "intranets," implementing automated censorship to prevent discussions of unionization.[138]

At common law, as a general matter, one is liable for defamation only if one makes "an affirmative act of publication to a third party."[139] This "affirmative act requirement" ordinarily

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[132] Alex Hern, Twitter hides Donald Trump tweet for 'glorifying violence', The Guardian (May 29, 2020), https://www.theguardian.com/technology/2020/may/29/twitter-hides-donald-trump-tweet-glorifying-violence.
[133] White House official Twitter account (May 29, 2020), https://twitter.com/WhiteHouse/status/1266367168603721728.
[134] Ajit Pai verified Twitter account (May 29, 2020), https://twitter.com/AjitPaiFCC/status/1266368492258816002.
[135] Google, Inc., Google Docs "About" page, https://www.google.com/docs/about/ (last visited June 15, 2020) ("Google Docs brings your documents to life with smart editing and styling tools to help you easily format text and paragraphs. Choose from hundreds of fonts, add links, images, and drawings. All for free . . . . Access, create, and edit your documents wherever you go — from your phone, tablet, or computer — even when there's no connection.").
[136] Thomas R. Broker, et al., An Effective Treatment for Coronavirus (COVID-19), (Mar. 13, 2020), page archived at https://archive.is/BvzkY (last visited June 15, 2020).
[137] Google, Inc., Google Docs result for https://docs.google.com/document/d/e/2PACX-1vTi-g18ftNZUMRAj2SwRPodtscFio7bJ7GdNgbJAGbdfF67WuRJB3ZsidgpidB2eocFHAVjIL-7deJ7/pub (last visited June 15, 2020) ("We're sorry. You can't access this item because it is in violation of our Terms of Service.").
[138] United Food and Commercial Workers International Union, Facebook Censorship of Worker Efforts to Unionize Threatens Push to Strengthen Protections for Essential Workers During COVID-19 Pandemic (June 12, 2020), http://www.ufcw.org/2020/06/12/censorship/.
[139] Benjamin C. Zipursky, Online Defamation, Legal Concepts, and the Good Samaritan, 51 Val. U. L. Rev. 1, 18 (2016) , available at https://scholar.valpo.edu/cgi/viewcontent.cgi?article=2426&context=vulr.

"depict[s] the defendant as part of the initial making or publishing of a statement."[140] The common law also recognized a "narrow exception to the rule that there must be an affirmative act of publishing a statement."[141] A person "while not actually publishing—will be subjected to liability for the reputational injury that is attributable to the defendant's failure to remove a defamatory statement published by another person."[142] Such a duty might apply where a defendant has undertaken an affirmative duty to remove. Stratton Oakmont embodies the latter idea: The court held that Prodigy, having undertaken to moderate some content on its page, thereby assumed an affirmative duty to moderate all content on its site. At common law, then, the publication element of defamation could be satisfied either through the rule—an affirmative act—or the exception—an omission where an affirmative duty applies.

Section 230(c)(1)'s "treated as the publisher or speaker" could plausibly be understood to foreclose liability only if a defendant would satisfy the exception. Satisfying the exception subjects one to defamation liability as if he were the publisher or speaker of the content, although he did not "actually publish[]" the content.[143] He is not a "true publisher" in the sense of satisfying the affirmative act requirement, but he is deemed or regarded as if he were because he had an affirmative duty to moderate.[144] This interpretation of section 230(c)(1) reads it to foreclose the very argument courts may have been on track to embrace after Stratton Oakmont, viz., that a platform has an affirmative duty to remove defamatory content and will be treated as satisfying the publication element of defamation for nonfeasance in the same way as a true publisher. Section 230(c)(1) states—in the face of Stratton Oakmont's contrary holding—a

[140] Id. at 19.
[141] Id. at 20.
[142] Id. at 21 (citing Restatement (Second) of Torts § 577(2) (Am. Law Inst. 1977)).
[143] Zipursky, 51 Val. L. Rev. at 21.
[144] Id. at 45.

general rule: There is no affirmative duty to remove. For that reason, section 230(c)(1) should be construed to concern only failures to remove and not takedowns, and not to apply when a platform "actually publishes" content.

NTIA suggests that the FCC can clarify the ambiguous phrase "speaker or publisher" by establishing that section 230(c)(1) does not immunize the conduct of an interactive service provider that is actually acting as a publisher or speaker in the traditional sense. Two points follow. First, when a platform moderates outside of section 230(c)(2)(A), section 230(c)(1) does not provide an additional, broader immunity that shields content takedowns more generally. Such affirmative acts are outside of the scope of (c)(1). Second, when a platform reviews third-party content already displayed on the internet and affirmatively vouches for it, editorializes, recommends, or promotes such content on the basis of the content's substance or message, the platform receives no section 230(c)(1) immunity. NTIA therefore requests that the FCC further add the below to newly requested Subpart E to 47 CFR Chapter I:

Subpart E. Clarifying Subsection 230(f)(2).

§ 130.04

(c) An interactive computer service is not being "treated as the publisher or speaker of any information provided by another information content provider" when it actually publishes its own or third-party content. Circumstances in which an interactive computer service actually publishes content include when:

> (i) it affirmatively solicits or selects to display information or content either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool pursuant to a reasonably discernible viewpoint or message, without having been prompted to, asked to, or searched for by the user; and (ii) it reviews third-party content already displayed on the Internet and affirmatively vouches for, editorializes, recommends, or promotes such content to other Internet users on the basis of the content's substance or messages. This paragraph applies to a review conducted, and a recommendation made, either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool.

(d) An interactive computer service does not publish content merely by:

(i) providing content in a form or manner that the user chooses, such as non-chronological order, explicit user preferences, or because a default setting of the service provides it, and the interactive computer service fully informs the user of this default and allows its disabling; or

(ii) transmitting, displaying, or otherwise distributing such content, or merely by virtue of moderating third-party content consistent with a good faith application of its terms of service in force at the time content is first posted. Such an interactive computer service may not, by virtue of such conduct, be "treated as a publisher or speaker" of that third-party content. 47 U.S.C. § 230(c)(1).

VI. Title I and Sections 163 and 257 of the Act Permit the FCC to Impose Disclosure Requirements on Information Services

With roots in the Modified Final Judgment for the break-up of AT&T[145] and codified by the Telecommunications Act of 1996,[146] the term "information service" refers to making information available via telecommunications. Under FCC and judicial precedent, social media sites are "information services." As such, courts have long recognized the Commission's power to require disclosure of these services under sections 163 and 257.

A. Social media are information services

Section 230(f)(2) explicitly classifies "interactive computer services" as "information services," as defined in 47 U.S.C. § 153(20).[147] Further, social media fits the FCC's definition of

[145] United States v. Am. Tel. & Tel. Co., 552 F. Supp. 131, 179 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) (observing that "'Information services' are defined in the proposed decree at Section IV(J) as: the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information which may be conveyed via telecommunications").

[146] 47 U.S.C. § 153(24).

[147] Id. ("[T]he offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.").

enhanced services.[148] In Brand X, the Supreme Court explained, "The definitions of the terms 'telecommunications service' and 'information service' established by the 1996 Act are similar to the Computer II basic-and enhanced-service classifications" with "'information service'—the analog to enhanced service."[149]

Numerous courts have ruled that search engines, browsers and internet social media precursors such as chat rooms are information services.[150] Courts have long recognized edge providers as information services under Title I. For example, in Barnes, the U.S. Court of Appeals for the Ninth Circuit classifies Yahoo's social networking services an "information service," interchangeably with "interactive computer service," and in Howard v. Am. Online, the same court designates America Online's messaging facilities "enhanced services."[151]

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[148] 47 CFR § 64.702 ("[S]ervices, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information.").

[149] Nat'l Cable & Telecommunications Ass'n v. Brand X Internet Servs., 545 U.S. 967, 977 (2005).

[150] Mozilla Corp. v. F.C.C., 940 F.3d 1, 34 (D.C. Cir. 2019) ("But quite apart from the fact that the role of ISP-provided browsers and search engines appears very modest compared to that of DNS and caching in ISPs' overall provision of Internet access, Petitioners are in a weak posture to deny that inclusion of 'search engines and web browsers' could support an 'information service' designation . . . since those appear to be examples of the 'walled garden' services that Petitioners hold up as models of 'information service'-eligible offerings in their gloss of Brand X.") (internal citations omitted); FTC v. Am. eVoice, Ltd., 242 F. Supp. 3d 1119 (D. Mont. 2017) (Email and online "chat rooms" "were enhanced services because they utilized transmission lines to function, as opposed to acting as a pipeline for the transfer of information . . . . 'This conclusion is reasonable because e-mail fits the definition of an enhanced service.'" (quoting Howard v. Am. Online Inc., 208 F.3d 741, 746 (9th Cir. 2000)). "Also excluded from coverage are all information services, such as Internet service providers or services such as Prodigy and America-On-Line." H.R. Rep. No. 103-827, at 18 (1994), as reprinted in 1994 U.S.C.C.A.N. 3489, 3498

[151] Barnes, 570 F.3d at 1101.

B. Several statutory sections empower the FCC to mandate disclosure

Beyond having jurisdiction over social media as information services, the FCC has clear statutory authority to impose disclosure requirements under sections 163 and 257 of the Communications Act. Section 163 charges the FCC to "consider all forms of competition, including the effect of intermodal competition, facilities-based competition, and competition from new and emergent communications services, including the provision of content and communications using the Internet" and "assess whether laws, regulations, regulatory practices . . . pose a barrier to competitive entry into the communications marketplace or to the competitive expansion of existing providers of communications services."[152] Section 257(a) of the Communications Act requires the FCC to examine market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services."[153]

In its 2018 Internet Order, the Commission relied on section 257 to impose service transparency requirements on providers of the information service of broadband internet access. It reasoned that doing so would reduce entry barriers.[154] Similar reasoning applies to requiring transparency for social media. Clear, current, readily accessible and understandable descriptions of an interactive computer service provider's content moderation policies would help enterprising content providers fashion their offerings so that they can be provided across multiple

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[152] 47 U.S.C. § 163.

[153] 47 U.S.C. § 257(a) (2018). While section 257 was amended and repealed in part, its authority remained intact in section 163. "Congress emphasized that '[n]othing in this title [the amendment to the Telecommunications Act creating section 163] or the amendments made by this title shall be construed to expand or contract the authority of the Commission." Mozilla, 940 F.3d at 47 citing Pub. L. No. 115-141, Div. P, § 403, 132 Stat. at 1090.

[154] Federal Communications Commission, In the Matter of Restoring Internet Freedom, 33 F.C.C. Rcd. 311 (2018).

platforms with reduced costs and friction for the provider and fewer disruptions to user experiences.[155]

Perhaps more important, information about an interactive computer service provider's content moderation policies would help entities design filtering products that could improve the providers' implementation of those policies, or assist consumers in remedying the gaps they may see in the providers' policies. Certainly, empowering consumers with blocking technologies that they choose and control—rather than accepting a platform's top-down centralized decisions, would directly advance section 230's policy of encouraging "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."[156] Increasing transparency about online platforms' content moderation practices would also enable users to make more informed choices about competitive alternatives.

Consumers today have a one-way relationship with social media transparency; platforms know everything about consumers, but consumers know very little about how or why platforms exercise influence or direct control over consumers' speech. Certain information disappears or becomes difficult to find, while other information is promoted and prominently displayed. Inevitably, some consumers and content creators begin to worry that secretive forces within platform providers are manipulating social media for ends that can only be guessed at.[157] Such suspicion is inevitable when there is so little transparency about the process behind the social media visibility of user-provided content, even when policies are applied fairly and no

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[155] See supra Section IV.
[156] 47 U.S.C. § 230(a)(3).
[157] Rod Dreher, Google Blacklists Conservative Websites (July 21, 2020), https://www.theamericanconservative.com/dreher/google-blacklists-conservative-websites/.

wrongdoing has taken place. By increasing transparency to consumers, platforms would ensure that consumers can choose to consume social media whose policies they agree with without fear that manipulations to which they did not consent are happening behind the scenes.

The importance of disclosure to our communications networks cannot be underestimated. Chairman Pai recognizes that democracies must require transparency and to ensure the proper function of essential communications networks.[158] That is why, when eliminating Title II common carrier so-called "network neutrality" regulations, Chairman Pai's FCC retained Title I disclosure requirements for broadband access service providers.

The same is true for other information service providers. Speaking of the social media platforms, FCC Chairman Ajit Pai asked "how do these companies make decisions about what we see and what we don't? And who makes those decisions?"[159] For social media, it is particularly important to ensure that large firms avoid "deceptive or pretextual actions stifling free and open debate by censoring certain viewpoints,"[160] or engage in deceptive or pretextual actions (often contrary to their stated terms of service) to stifle viewpoints with which they disagree."[161]

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[158] Federal Communications Commission, In the Matter of Restoring Internet Freedom, WC Docket No. 17-108, Declaratory Ruling, Report And Order, And Order (Jan, 4, 2018) ¶ 209, available at https://www.fcc.gov/document/fcc-releases-restoring-internet-freedom-order ("'Sunlight,' Justice Brandeis famously noted, 'is . . . the best of disinfectants.' This is the case in our domain. Properly tailored transparency disclosures provide valuable information to the Commission to enable it to meet its statutory obligation to observe the communications marketplace to monitor the introduction of new services and technologies, and to identify and eliminate potential marketplace barriers for the provision of information services. Such disclosures also provide valuable information to other Internet ecosystem participants.").

[159] Ajit Pai, What I Hope to Learn from the Tech Giants (Sept. 4, 2018), https://www.fcc.gov/news-events/blog/2018/09/04/what-i-hope-learn-tech-giants (last visited June 15, 2020).

[160] E.O. 13925, Section 2(a).

[161] Id.

To prevent these ends, NTIA requests that the FCC further add the below to Subpart E to 47 CFR Chapter I Subchapter A Part 8:

§ 8.2 Transparency for Interactive Computer Services.

Any person providing an interactive computer service in a manner through a mass-market retail offering to the public shall publicly disclose accurate information regarding its content-management mechanisms as well as any other content moderation, promotion, and other curation practices of its interactive computer service sufficient to enable (i) consumers to make informed choices regarding the purchase and use of such service and (ii) entrepreneurs and other small businesses to develop, market, and maintain offerings by means of such service. Such disclosure shall be made via a publicly available, easily accessible website or through transmittal to the Commission.

VII. Conclusion

For the foregoing reasons, NTIA respectfully requests that the Commission institute a rulemaking to interpret Section 230 of the Communications Act.

Respectfully submitted,

_____
Douglas Kinkoph
Performing the Delegated Duties of the
Assistant Secretary for Commerce for
Communications and Information

July 27, 2020

APPENDIX A: Proposed Rules

47 CFR Chapter I, Subchapter E
Part 130 – Section 230 of the Communications Decency Act.

Interpreting Subsection 230(c)(1) and Its Interaction With Subsection 230(c)(2).
§ 130.01
As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

(a) 47 U.S.C. 230(c)(1) applies to an interactive computer service for claims arising from failure to remove information provided by another information content provider. Section 230(c)(1) has no application to any interactive computer service's decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service. Any applicable immunity for matters described in the immediately preceding sentence shall be provided solely by 47 U.S.C. § 230(c)(2).

(b) An interactive computer service is not a publisher or speaker of information provided by another information content provider solely on account of actions voluntarily taken in good faith to restrict access to or availability of specific material in accordance with subsection (c)(2)(A) or consistent with its terms of service or use.

(c) An interactive computer service is not being "treated as the publisher or speaker of any information provided by another information content provider" when it actually publishes its own or third-party content. Circumstances in which an interactive computer service actually publishes content include when:

(i) it affirmatively solicits or selects to display information or content either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool pursuant to a reasonably discernible viewpoint or message, without having been prompted to, asked to, or searched for by the user;

(ii) it reviews third-party content already displayed on the Internet and affirmatively vouches for, editorializes, recommends, or promotes such content to other Internet users on the basis of the content's substance. This paragraph applies to a review conducted, and a recommendation made, either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool.

(d) An interactive computer service does not publish content merely by:

(1) providing content in a form or manner that the user chooses, such as non-chronological order, explicit user preferences, or because a default

setting of the service provides it, and the interactive computer service fully informs the user of this default and allows its disabling; or
(2) transmitting, displaying, or otherwise distributing such content, or merely by virtue of moderating third-party content consistent with a good faith application of its terms of service in force at the time content is first posted. Such an interactive computer service may not, by virtue of such conduct, be "treated as a publisher or speaker" of that third-party content. 47 U.S.C. § 230(c)(1).

Clarifying Subsection 230(c)(2).
§ 130.02
As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

(a) "obscene," "lewd," lascivious" and "filthy"
The terms "obscene," "lewd," "lascivious," and "filthy" mean material that

iv. taken as a whole, appeals to the prurient interest in sex or portrays sexual conduct in a patently offensive way, and which, taken as a whole, does not have serious literary, artistic, political, or scientific value;
v. depicts or describes sexual or excretory organs or activities in terms patently offensive as measured by contemporary community standards; to the average person, applying contemporary community standards; or
vi. signifies the form of immorality which has relation to sexual impurity, and have the same meaning as is given them at common law in prosecutions for obscene libel.

(b) "excessively violent"
The term "excessively violent" means material that

iii. is likely to be deemed violent and for mature audiences according the Federal Communications Commission's V-chip regulatory regime and TV Parental Guidance, promulgated pursuant to Section 551 of the 1996 Telecommunications Act Pub. L. No. 104-104, § 551, 110 Stat. 139-42 (codified at 47 U.S.C. § 303; § 330(c)(4));
iv. constitutes or intends to advocate domestic terrorism or international terrorism, each as defined in 18 U.S.C. § 2331 ("terrorism").

(c) "harassing"
The term "harassing" means any material that

iv. that sent by an information content provider that has the subjective intent to abuse, threaten, or harass any specific person and is lacking in any serious literary, artistic, political, or scientific value;
v. regulated by the CAN-SPAM Act of 2003, 117 Stat. 2699; or
vi. that is malicious computer code intended (whether or not by the immediate disseminator) to damage or interfere with the operation of a computer.

(d) "otherwise objectionable"
The term "otherwise objectionable" means any material that is similar in type to obscene, lewd, lascivious, filthy, excessively violent, or harassing materials.

(e) "good faith"

A platform restricts access to or availability of specific material (including, without limitation, its scope or reach) by itself, any agent, or any unrelated party in "good faith" under 47 U.S.C. § (c)(2)(A) if it:

v. restricts access to or availability of material or bars or refuses service to any person consistent with publicly available terms of service or use that state plainly and with particularity the criteria the interactive computer service employs in its content-moderation practices, including by any partially or fully automated processes, and that are in effect on the date such content is first posted;

vi. has an objectively reasonable belief that the material falls within one of the listed categories set forth in 47 U.S.C. § 230(c)(2)(A);

vii. does not restrict access to or availability of material on deceptive or pretextual grounds, and does not apply its terms of service or use to restrict access to or availability of material that is similarly situated to material that the interactive computer service intentionally declines to restrict; and

viii. supplies the interactive computer service of the material with timely notice describing with particularity the interactive computer service's reasonable factual basis for the restriction of access and a meaningful opportunity to respond, unless the interactive computer service has an objectively reasonable belief that the content is related to criminal activity or such notice would risk imminent physical harm to others.

Clarifying Subsection 230(f)(2).

§ 130.03

As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

For purposes of 47 U.S.C. § 230(f)(3), "responsible, in whole or in part, for the creation or development of information" includes substantively contributing to, modifying, altering, presenting with a reasonably discernible viewpoint, commenting upon, or editorializing about content provided by another information content provider.

47 CFR Chapter I Subchapter A Part 8 ---Internet Freedom.

§ 8.2 Transparency for Interactive Computer Services.

Any person providing an interactive computer service in a manner through a mass-market retail offering to the public shall publicly disclose accurate information regarding its content-management mechanisms as well as any other content moderation, promotion, and other curation practices of its interactive computer service sufficient to enable (i) consumers to make informed choices regarding the purchase and use of such service and (ii) entrepreneurs and other small businesses to develop, market, and maintain offerings by means of such service. Such disclosure shall be made via a publicly available, easily accessible website or through transmittal to the Commission.

From:	Kinkoph, Douglas
To:	Smith, Kathy; Candeub, Adam; Simington, Nathan
Cc:	Yusko, Stephen F.
Subject:	RE: NTIA Petition for Rulemaking re: Social Media Executive Order
Date:	Monday, July 27, 2020 4:07:54 PM
Attachments:	NTIA Social Media Petition for Rulemaking 7.27.20.pdf

Signed copy attached.

Doug

From: Smith, Kathy <KSmith@ntia.gov>
Sent: Monday, July 27, 2020 3:58 PM
To: Kinkoph, Douglas <DKinkoph@ntia.gov>; Candeub, Adam <acandeub@ntia.gov>; Simington, Nathan <nsimington@ntia.gov>
Cc: Yusko, Stephen F. <SYusko@ntia.gov>
Subject: NTIA Petition for Rulemaking re: Social Media Executive Order

Attached please find a Word file containing the final of the Petition for Rulemaking that incorporates the last few minor footnote edits (Adam and Nathan) and Doug's signature block and deletes the Table of Authorities. Please note the Word file still contains the metadata so I would recommend not sharing it outside of Commerce even under an embargo

I have also attached a pdf file for signature. It has been stripped of all metadata.

Please sign it (when you regain access to Citrix) and send it back to me. I will file it through ECFS at 5 p.m. today and send you all the confirmation page.

Kathy Smith
Chief Counsel
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
HCHB 4713
Washington, DC 20230
Phone: 202-482-1816
Email: ksmith@ntia.gov

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Section 230 of the	)	File No. RM-_____
Communications Act of 1934	)	

To: The Commission

PETITION FOR RULEMAKING OF THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

National Telecommunications and
Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230
(202) 482-1816

July 27, 2020

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Section 230 of the	)	File No. RM-_____
Communications Act of 1934	)	

To: The Commission

PETITION FOR RULEMAKING OF THE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

Pursuant to section 1.401 of the Code of Federal Regulations,[1] in accordance with Executive Order 13925 (E.O. 13925),[2] and through the National Telecommunications and Information Administration (NTIA), the Secretary of Commerce (Secretary) respectfully requests that the Federal Communications Commission (FCC or Commission) initiate a rulemaking to clarify the provisions of section 230 of the Communications Act of 1934, as amended.[3] NTIA, as the President's principal adviser on domestic and international telecommunications and information policy, is charged with developing and advocating policies concerning the regulation of the telecommunications industry and "ensur[ing] that the views of the executive branch on telecommunications matters are effectively presented to the Commission . . . ."[4] Specifically, per E.O. 13925, NTIA requests that the Commission propose rules to clarify:

[1] 47 CFR § 1.401(a).
[2] Exec. Order No. 13925: Preventing Online Censorship, 85 Fed. Reg. 34,079 (June 2, 2020) (E.O. 13925).
[3] 47 U.S.C. § 230.
[4] 47 U.S.C. § 902(b)(2)(J); see also 47 U.S.C. §§ 901(c)(3), 902(b)(2)(I) (setting forth related duties).

(i) the interaction between subparagraphs (c)(1) and (c)(2) of section 230, in particular to clarify and determine the circumstances under which a provider of an interactive computer service that restricts access to content in a manner not specifically protected by subparagraph (c)(2)(a) may also not be able to claim protection under subparagraph (c)(1);[5]

(ii) the conditions under which an action restricting access to or availability of material is not "taken in good faith" within the meaning of subparagraph (c)(2)(A) of section 230, particularly whether actions can be "taken in good faith" if they are

(A) deceptive, pretextual, or inconsistent with a provider's terms of service; or

(B) taken after failing to provide adequate notice, reasoned explanation, or a meaningful opportunity to be heard;[6] and

(iii) any another proposed regulation that NTIA concludes may be appropriate to advance the policy described in subsection (a) of E.O. 13925, to impose disclosure requirements similar those imposed on other internet companies, such as major broadband service providers, to promote free and open debate on the internet.[7]

[5] See infra sections V.E.1, V.E.3 and section V.E.4.
[6] See infra section V.E.2.
[7] See infra section VI.

I. Statement of Interest

Since its inception in 1978, NTIA has consistently supported pro-competitive, pro-consumer telecommunications and internet policies. NTIA files this petition pursuant to E.O. 13925 to ensure that section 230 of the Communications Act of 1934, as amended, continues to further these goals. The President, through E.O. 13925, has directed the Secretary to file this petition for rulemaking through NTIA.[8]

II. Summary of Argument

Freedom of expression defends all our other freedoms. Only in a society that protects free expression can citizens criticize their leaders without fear, check their excesses, and expose their abuses. As Ben Franklin stated, "[w]hoever would overthrow the Liberty of a Nation, must begin by subduing the Freeness of Speech."[9] However, social media and its growing dominance present troubling questions on how to preserve First Amendment ideals and promote diversity of voices in modern communications technology. Social media's power stems in part from the legal immunities granted by the Communications Decency Act of 1996.[10] Congress passed the statute in the beginning of the internet age with the goal of creating a safe internet for children. It did so by protecting children from pornography and providing incentives for platforms to

[8] E.O. 13925, Section 2(b).
[9] Benjamin Franklin, Silence Dogood No. 8, The New-England Courant, July 9, 1722.
[10] Communications Decency Act of 1996 (CDA), Pub. L. No. 104-104, 110 Stat. 133, Title V—Obscenity and Violence, § 509 "Online family empowerment," codified at 47 U.S.C. 230, "Protection for private blocking and screening of offensive material." The CDA was incorporated as Title V to the Telecommunications Act of 1996, which in turn, was incorporated in the Communications Act of 1934. While these laws are all now part of the same statute, they do have separate histories and will be referred to individually when necessary.

remove harmful content. While the Supreme Court struck down the provisions limiting pornography, section 230 remained.[11]

Section 230 is the legislative response to a New York state case, Stratton Oakmont, Inc. v. Prodigy Servs. Co.[12] In this case, the court extended tort liability to internet bulletin boards and ruled that defendant Prodigy Services Company would be liable for the entire content of their platform if they engaged in editing and moderation to remove distasteful content.[13] Congress intended section 230 to offer platforms immunity from liability under certain circumstances, namely to encourage platforms to moderate specific types of material, mostly that are sexual or inappropriate to minors. It is vital to remember, however, that Congress in section 230 also had the express purpose of ensuring that the "Internet and other [internet platforms] offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity."[14]

Times have changed, and the liability rules appropriate in 1996 may no longer further Congress's purpose that section 230 further a "true diversity of political discourse." A handful of large social media platforms delivering varied types of content over high-speed internet have replaced the sprawling world of dial-up Internet Service Providers (ISPs) and countless bulletin boards hosting static postings. Further, with artificial intelligence and automated methods of textual analysis to flag harmful content now available, unlike at the time of Stratton Oakmont, Inc., platforms no longer need to manually review each individual post but can review, at much

[11] Reno v. American Civil Liberties Union, 521 U.S. 844 (1997).
[12] 1995 WL 323710 (N.Y. Sup. Ct., May 24, 1995) (unpublished). See also, Force v. Facebook, Inc., 934 F.3d 53, 63-64 (2d Cir. 2019) ("To overrule Stratton . . . .").
[13] Stratton Oakmont, 1995 WL 323710, at *3.
[14] 47 U.S.C. § 230(a)(3).

lower cost, millions of posts.[15] Thus, the fundamental assumptions driving early section 230 interpretation are antiquated and lack force, thus necessitating a recalibration of section 230 protections to accommodate modern platforms and technologies.

The FCC should use its authorities to clarify ambiguities in section 230 so as to make its interpretation appropriate to the current internet marketplace and provide clearer guidance to courts, platforms, and users. NTIA urges the FCC to promulgate rules addressing the following points:

1. Clarify the relationship between subsections (c)(1) and (c)(2), lest they be read and applied in a manner that renders (c)(2) superfluous as some courts appear to be doing.

2. Specify that Section 230(c)(1) has no application to any interactive computer service's decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service.

3. Provide clearer guidance to courts, platforms, and users, on what content falls within (c)(2) immunity, particularly section 230(c)(2)'s "otherwise objectionable" language and its requirement that all removals be done in "good faith."

4. Specify that "responsible, in whole or in part, for the creation or development of information" in the definition of "information content provider," 47 U.S.C. § 230(f)(3), includes editorial decisions that modify or alter content, including but not limited to substantively contributing to, commenting upon, editorializing about, or presenting with a discernible viewpoint content provided by another information content provider.

[15] Adrian Shahbaz & Allie Funk, "Freedom on the Net 2019 Key Finding: Governments harness big data for social media surveillance," Freedom House, Social Media Surveillance, https://freedomhouse.org/report/freedom-on-the-net/2019/the-crisis-of-social-media/social-media-surveillance ("Social media surveillance refers to the collection and processing of personal data pulled from digital communication platforms, often through automated technology that allows for real-time aggregation, organization, and analysis of large amounts of metadata and content . . . . Advances in artificial intelligence (AI) have opened up new possibilities for automated mass surveillance.").

5. Mandate disclosure for internet transparency similar to that required of other internet companies, such as broadband service providers.

III. The Commission Should Act to Protect Free Speech Online

New regulations guiding the interpretation of section 230 are necessary to facilitate the provisions' interpretation in a way that best captures one of the nation's most important Constitutional freedoms. "Free speech is the bedrock of American democracy . . . . The freedom to express and debate ideas is the foundation for all of our rights as a free people."[16] Our democracy has long recognized that control of public discourse in the hands of too few stifles freedom of expression and risks undermining our political institutions. For centuries, Americans have taken action to maintain the free flow of information and ideas to ensure the fullest and most robust marketplace of ideas—from the Postal Service Act of 1792, one of Congress's first acts which established preferential rates for newspapers,[17] to nondiscrimination requirements for telegraphs and telephones,[18] to antitrust actions to ensure the free flow of news stories,[19] and to efforts to limit undue dominance in broadcast and cable media to guarantee the flow of information to television viewers.[20]

Yet today, free speech faces new threats. Many Americans follow the news, stay in touch with friends and family, and share their views on current events through social media and other

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[16] E.O. 13925, Section 1.
[17] Richard B. Kielbowicz, News in the Mail: The Press, Post Office and Public Information, 1700-1860s, at 33-34 (1989).
[18] Thomas B. Nachbar, The Public Network, 17 CommLaw Conspectus 67, 77 (2008). ("Nondiscriminatory access is . . . the order of the day for . . . telecommunications, and even cable television.").
[19] Associated Press v. United States, 326 U.S. 1 (1945).
[20] Turner Broad. Sys, Inc. v. F.C.C., 512 U.S. 622 (1994); F.C.C. v. National Citizens Comm. for Broad., 436 U.S. 775 (1978); Nat'l Broad. Co. v. United States, 319 U.S. 190 (1943); Time Warner Ent. Co. L.P. v. F.C.C., 240 F.3d 1126 (D.C. Cir. 2001).

online platforms. These platforms function, as the Supreme Court recognized, as a 21st century equivalent of the public square.[21] Provision and control of the public square is a public trust. Because it entails selecting which speech gets heard and by whom, social media can assimilate a collective conversation into a corporate voice with a corporate point of view. As the E.O. explains, "[w]hen large, powerful social media companies censor opinions with which they disagree, they exercise a dangerous power. They cease functioning as passive bulletin boards, and ought to be viewed and treated as content creators."[22] The Commission itself has previously recognized the importance of enabling "the widest possible dissemination of information from diverse and antagonistic sources" and "assuring that the public has access to a multiplicity of information sources" as internet regulations' essential goal.[23]

Unfortunately, large online platforms appear to engage in selective censorship that is harming our national discourse. The E.O. notes that "[t]ens of thousands of Americans have reported online platforms "flagging" content as inappropriate, even though it does not violate any stated terms of service" and is not unlawful. The platforms "mak[e] unannounced and unexplained changes to company policies that have the effect of disfavoring certain viewpoints and delet[e] content and entire accounts with no warning, no rationale, and no recourse."[24] FCC

[21] Packingham v. North Carolina, 137 S. Ct. 1730, 1732 (2017) ("Social media . . . are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge.").
[22] E.O. 13925, Section 1.
[23] Federal Communications Commission, In the Matter of Protecting and Promoting the Open Internet, GN Docket No. 14-28, FCC 15-24, Report and Order on Remand, Declaratory Ruling, and Order, 2015 WL 1120110, *268 (¶ 545) (quoting Turner, 512 U.S. at 663).
[24] E.O. 13925, Section 1; Divino Group LLC, et al. v. Google LLC, et al., 5:19-cv-4749-VKD, Dkt #20 (2d Am. Compl.) at ¶¶ 119-123, 128-247 (N.D. Cal. (San Jose Division), dated Aug. 13, 2019) (class action complaint alleging YouTube censorship of LGBT+ content).

Commissioner Brendan Carr has remarked, "there's no question that [large social media platforms] are engaging in editorial conduct, that these are not neutral platforms."[25] Others have expressed shock that while large social media platforms will censor or fact-check constitutionally elected democratic leaders, many social media companies welcome and facilitate censorship by the Chinese Communist Party, thereby spreading disinformation and communist propaganda related to China's mass imprisonment of religious minorities, the origins of the COVID-19 pandemic, and the pro-democracy protests in Hong Kong.[26] Unfortunately, few academic empirical studies exist of the phenomenon of social media bias.

Much of social media's overarching influence and power stems from the immunities it enjoys under expansive interpretations of section 230 of the Communications Decency Act,[27] a provision Congress passed in 1996 at the beginning of the internet era. Many early cases, understandably protective of a nascent industry, read section 230's protections expansively. But, given the maturing internet economy and emergence of dominant social media platforms, the FCC should re-examine section 230, as well as other provisions of the Communications Act of 1934. The FCC should determine how section 230 can best serve its goals of promoting internet

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[25] Jan Jekielek, On Social Media Bias, Trump's Executive Order, and the China Data Threat: FCC Commissioner Brendan Carr, The Epoch Times, June 1, 2020, https://www.theepochtimes.com/on-social-media-bias-trumps-executive-order-and-the-china-data-threat-fcc-commissioner-brendan-carr_3372161.html.

[26] See, e.g., Sigal Samuel, China paid Facebook and Twitter to help spread anti-Muslim propaganda, Vox, Aug. 22, 2019, https://www.vox.com/future-perfect/2019/8/22/20826971/facebook-twitter-china-misinformation-ughiur-muslim-internment-camps; Ryan Gallagher, China's Disinformation Effort Targets Virus, Researcher Says, Bloomberg News, May 12, 2020, https://www.bloomberg.com/news/articles/2020-05-12/china-s-disinformation-campaign-targets-virus-and-businessman; James Titcomb & Laurence Dodds, Chinese state media use Facebook adverts to champion Hong Kong crackdown, June 8, 2020, https://www.telegraph.co.uk/technology/2020/06/08/chinese-state-media-use-facebook-adverts-champion-hong-kong/.

[27] 47 U.S.C. § 230.

diversity and a free flow of ideas, as well as holding dominant platforms accountable for their editorial decisions, in new market conditions and technologies that have emerged since the 1990s.[28]

IV. Relevant Facts and Data: Technological and Market Changes

Contemporary social media platforms have vastly different offerings, business models, relationships to users and customers, and, indeed, roles in national life than the early online bulletin boards that Prodigy and AOL offered in 1996. The FCC should recognize that the liability protections appropriate to internet firms in 1996 are different because modern firms have much greater economic power, play a bigger, if not dominant, role in American political and social discourse, and, with machine learning and other artificial techniques, have and exercise much greater power to control and monitor content and users.

CompuServe, Prodigy, America Online, and their competitors had fundamentally different business models from modern social media companies.[29] They had proprietary server banks, and their business model was to charge consumers for access, with significant surcharges

[28] See, e.g., Cubby, Inc. v. CompuServe Inc., 776 F.Supp. 135 (S.D.N.Y. 1991) (addressing CompuServe's 1990 service providing various online subscriber forums for certain groups).
[29] Andrew Pollack, Ruling May Not Aid Videotex, N.Y. Times, Sept. 15, 1987, at D1, https://www.nytimes.com/1987/09/15/business/ruling-may-not-aid-videotex.html (last visited July 27, 2020) ("The Videotex Industry Association estimates that there are 40 consumer-oriented services, such as CompuServe and the Source, in the United States, with a total membership of 750,000.").

for use of social features.[30] They were not interoperable,[31] There was thus no online "general public" population about whom information could be known, nor were there business partners to whom information on members of the public could be aggregated and sold. Online services faced a competitive landscape.

Online services competed with one another by commissioning or developing their own games, chat systems, financial-markets reporting, news services, and in-network mail services.[32] As users paid to connect, and thus directly funded online services, most online services did not contain advertising. The online service business model was not significantly reliant on third-party content because access to proprietary content was at the heart of online services' marketing

[30] Id. ("It is unclear, for instance, to what extent the gateway will be able to tell consumers where to go for the information they desire . . . . Each information service has its own commands for information retrieval."); Michael J. Himowitz, A look at on-line services CompuServe and Prodigy, The Baltimore Sun, Jan. 17, 1994 ("CompuServe [costs] $8.95 per month . . . . Effective Feb. 6, rates for forums and extended services . . . are an additional $4.80 per hour at 1200 or 2400 Baud, $9.60 per hour at 9600 or 14,400 Baud . . . . Prodigy: Most popular plan charges $14.95 per month . . . Additional Plus hours [for use of bulletin boards and stock market prices] are $3.60 each.").

[31] Pollack, supra note 29 ("Each information service has its own commands for information retrieval. With a useful gateway [which did not yet exist], the user would need to know only one set of commands and the gateway would translate them."); David Bernstein, Interoperability: The Key to Cloud Applications, https://e.huawei.com/en/publications/global/ict_insights/hw_376150/feature%20story/HW_376286 (last visited July 19, 2020) ("[T]he original online services such as AOL, Prodigy, and CompuServe had no interoperability between them. Content posted on one service could not be consumed by a client connected to a different service. Email could not be sent from a user on one service to a user on another.").

[32] Joanna Pearlstein, MacWorld's Guide to Online Services, MacWorld, Aug. 1994, at 90 ("Core services include general, business, and sports news; computer forums and news; reference materials; electronic mail and bulletin boards; business statistics and data; games; shopping services; travel services; and educational reference material. Still, the different online services do have different emphases, so even though they all offer a range of basic services, they are not interchangeable.").

efforts.[33] The online services of the late 1990s ran online bulletin boards as a minor sideline and used volunteer moderators from the computer hobbyist community.[34] Their business model was based on fees for connection time and professional database access, not community content.

One result of this model was that monitoring users and their content was a burden and regulatory imposition. Zeran, a leading and widely cited case on moderation, reflects this understanding of the technology of that time.[35] The Zeran court took the view, which most section 230 cases accept, that "liability [for third-party posts] upon notice [by an offended

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[33] James Coats, Getting on-line with cyberspace heavyweights, Chicago Tribune, Feb. 28, 1993 at C8 ("GEnie's greatest value to me is that it serves as a gateway to the ultraexpensive Dow Jones News/Retrieval service. Typing DOWJONES on GEnie gets me access to hundreds of thousands of newspaper articles - but at a cost well above $2 a minute. Still, when I'm involved in personal research, it empowers me with access to more than 100 different newspapers, wire services and magazines . . . . A costly service [on CompuServe] called IQUEST, for example, gets you access to thousands of newspapers, magazines, books and other research materials. A magazine database lets you search hundreds of thousands of back issues of publications from Playboy to Foreign Policy. The catch is that each article you decide to read in full costs $1.50 . . . . Tremendous amounts of information about stocks and investing can be had as well, for a price. You can follow favorite stocks by BasicQuotes and seek out news by company. Much of the famous Standard and Poor's research data can be had on CompuServe's S&P Online. Most company filings with the Securities and Exchange Commission can be downloaded on a service called Disclosure. I make heavy use of CompuServe's Executive News Service, which gives me an electronic 'clipping service' providing each day's news about dozens of firms I follow for my job, as well as other topics . . . . But Delphi takes the Internet much further than the other boards, which confine Internet traffic to electronic mail. With Delphi you can actually hook your home computer up with mainframes and minicomputers all around the world and read and download an almost unimaginably diverse wealth of files.").

[34] Catherine Buni & Soraya Chemaly, The Secret Rules of the Internet: the murky history of moderation, and how it's shaping the future of free speech, The Verge (April 13, 2016), https://www.theverge.com/2016/4/13/11387934/internet-moderator-history-youtube-facebook-reddit-censorship-free-speech (last visited July 19, 2020) ("Moderation's initially haphazard, laissez-faire culture has its roots here. Before companies understood how a lack of moderation could impede growth and degrade brands and community, moderators were volunteers; unpaid and virtually invisible. At AOL, moderation was managed by a Community Leader program composed of users who had previously moderated chat rooms and reported 'offensive' content. They were tasked with building 'communities' in exchange for having their subscription fees waived. By 2000, companies had begun to take a more proactive approach.").

[35] Zeran v. Am. Online, Inc., 129 F.3d 327 (4th Cir. 1997).

viewer] reinforces service providers' incentives to restrict speech and abstain from self-regulation."[36] The court went on to explain that online services cannot possibly take responsibility for third-party content due to its volume; as such, online services will simply prohibit all such content unless they are protected from liability for it. In the court's words:

> "If computer service providers were subject to distributor liability, they would face potential liability each time they receive notice of a potentially defamatory statement—from any party, concerning any message. Each notification would require a careful yet rapid investigation of the circumstances surrounding the posted information, a legal judgment concerning the information's defamatory character, and an on-the-spot editorial decision whether to risk liability by allowing the continued publication of that information. Although this might be feasible for the traditional print publisher, the sheer number of postings on interactive computer services would create an impossible burden in the Internet context."[37]

However, today's social media companies have adopted a different business model. Rather than provide database access, like Prodigy did, social media offers primarily third-party content.[38] Rather than charge fees, social media platforms profile users in order to categorize

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[36] Id. at 333.
[37] Id.
[38] Facebook Investor Relations, https://investor.fb.com/resources/default.aspx (last visited July 19, 2020) ("Founded in 2004, Facebook's mission is to give people the power to build community and bring the world closer together. People use Facebook to stay connected with friends and family, to discover what's going on in the world, and to share and express what matters to them."); Twitter Investor Relations, https://investor.twitterinc.com/contact/faq/default.aspx (last visited July 19, 2020) ("What is Twitter's mission statement? The mission we serve as Twitter, Inc. is to give everyone the power to create and share ideas and information instantly without barriers. Our business and revenue will always follow that mission in ways that improve – and do not detract from – a free and global conversation."); Google, Our Approach to Search, https://www.google.com/search/howsearchworks/mission/ (last visited July 19, 2020) ("Our company mission is to organize the world's information and make it universally accessible and useful."); YouTube Mission Statement, https://www.youtube.com/about/ (last visited July 19, 2020) ("Our mission is to give everyone a voice and show them the world. We believe that everyone deserves to have a voice, and that the world is a better place when we listen, share and build community through our stories."); Matt Buchanan, Instagram and the Impulse to Capture Every Moment, The New Yorker, June 20, 2013, https://www.newyorker.com/tech/annals-of-technology/instagram-and-the-impulse-to-capture-every-moment (last visited July 27, 2020)

them and connect them to advertisers and other parties interested in user information.[39] Online platforms like Twitter, Facebook, and YouTube have content moderation at the heart of their business models. Unlike the early internet platforms, they have invested immense resources into both professional manual moderation and automated content screening for promotion, demotion, monetization, and removal.[40]

("When I think about what Instagram is, I think about moments," said Kevin Systrom, the photo-sharing service's co-founder and C.E.O. "Our mission is to capture and share the world's moments.").

[39] Len Sherman, Why Facebook Will Never Change Its Business Model, Forbes.com, Apr, 16, 2018, https://www.forbes.com/sites/lensherman/2018/04/16/why-facebook-will-never-change-its-business-model/#7cdac11c64a7 (last visited July 27, 2020) ("By now, it's widely understood that Facebook's voracious appetite for user data is driven by their business model which charges advertisers for access to precisely targeted segments of their massive consumer database. No one knows more about more consumers than Facebook"); Twitter and Facebook have differing business models, The Economist, June 6, 2020, https://www.economist.com/business/2020/06/04/twitter-and-facebook-have-differing-business-models (last visited July 27, 2020) ("At first blush, Twitter and Facebook look similar. Each is a social network, connecting users online and presenting them with content in a 'feed', a never-ending list of posts, pictures and videos of pets. Each makes money by selling advertising, and thus has an interest in using every trick to attract users' attention. And each employs gobbets of data gleaned from users' behaviour to allow advertisers to hit targets precisely, for which they pay handsomely"); Enrique Dans, Google Vs. Facebook: Similar Business Models, But With Some Very Big Differences, Forbes.com, Feb. 2, 2019, https://www.forbes.com/sites/enriquedans/2019/02/02/google-vs-facebook-similar-business-models-but-with-some-very-big-differences/#6ab9408541ef (last visited July 27, 2020) ("Google does not sell my data or pass it on to any third party, it simply allows that third party to display an advertisement to a segment of its database that includes me, based on certain variables . . . . What is the result of Google knowing about us and our online interests? We receive ads that largely reflect those interests and we still have some control over what we see.").

[40] Zoe Thomas, Facebook content moderators paid to work from home, BBC.com, Mar. 18, 2020, https://www.bbc.com/news/technology-51954968 (last visited July 27, 2020) ("Facebook has approximately 15,000 content moderators in the US, who are hired by third-party contracting companies"); Elizabeth Dwoskin, et al., Content moderators at YouTube, Facebook and Twitter see the worst of the web — and suffer silently, Washington Post, July 25, 2019, https://www.washingtonpost.com/technology/2019/07/25/social-media-companies-are-outsourcing-their-dirty-work-philippines-generation-workers-is-paying-price/ (last visited July 27, 2020) ("In the last couple of years, social media companies have created tens of thousands of jobs around the world to vet and delete violent or offensive content . . . ."); Shannon Bond, Facebook, YouTube Warn Of More Mistakes As Machines Replace Moderators, National Public

Understanding how new entrants can or cannot participate in these intermediary markets is therefore key in understanding appropriate liability regimes; this is particularly important because liability shields can deter entrance. Market observers have significant concerns about barriers to entrance for new social media companies as well as social media's role with other edge providers in creating mediation markets. It is no secret that today's online platforms exist in highly concentrated markets.[41] Moreover, the relationship between social media and their adjacent markets is unclear, with mergers and other agreements having the potential for unexpected anticompetitive results.[42] Social media firms also demonstrate network effects and other barriers to entry, which frequently lead to weaker competition.[43] This lack of competition is particularly troubling given the decrease of new entrants documented in the broader economy.[44]

Section 230 was designed to assist the nascent internet industry. Pivotal judicial decisions, such as Zeran, interpreted ambiguous language in section 230 broadly, but at a time when different cost structures, business models, and markets prevailed. Given the rapidly

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Radio, March 31, 2020, https://www.npr.org/2020/03/31/820174744/facebook-youtube-warn-of-more-mistakes-as-machines-replace-moderators (last visited July 27, 2020) ("Facebook, YouTube and Twitter are relying more heavily on automated systems to flag content that violate their rules . . . . Tech companies have been saying for years that they want computers to take on more of the work of keeping misinformation, violence and other objectionable content off their platforms. Now the coronavirus outbreak is accelerating their use of algorithms rather than human reviewers.").

[41] Justin Haucap & Ulrich Heimeshoff, Google, Facebook, Amazon, eBay: Is the Internet driving competition or market monopolization? 11 Int. Econ. Policy 49–61 (2014).

[42] Carl Shapiro, Protecting Competition in the American Economy: Merger Control, Tech Titans, Labor Markets. 33(3) Journal of Economic Perspectives 69 (2019), available at http://faculty.haas.berkeley.edu/shapiro/protectingcompetition.pdf.

[43] Steven Berry, Martin Gaynor & Fiona Scott Morton, Do Increasing Markups Matter? Lessons from Empirical Industrial Organization, 33(3) Journal of Economic Perspectives 44 (2019).

[44] Germán Gutiérrez & Thomas Philippon, The Failure of Free Entry. NBER Working Paper No. 26001 (June 2019), available at https://www.nber.org/papers/w26001.pdf.

changing markets and relationship between market structure and optimal liability rules, NTIA urges the FCC to re-examine section 230 and work towards transparency in these markets.

V. The Authority and Need for Issuing Regulations for Section 230

This section sets forth the FCC's authority to issue regulations to interpret section 230 and shows how regulations are necessary to resolve the statute's ambiguities that the E.O. identified. This section further explains how the FCC has jurisdiction to issue regulations, outlines the background and history of section 230, explains its structure, and shows how courts have relied upon its ambiguities to make overly expansive interpretations.

Finally, it examines how the section's ambiguities should be resolved. Specifically, NTIA respectfully requests the FCC to:

- clarify the relationship between 230(c)(1) and (c)(2);
- explain the meaning of "good faith" and "otherwise objectionable" in section 230(c)(2);
- specify how the limitation on the meaning of "interactive computer service" found in section 230(f)(2) should be read into section 230(c)(1); and,
- explicate the meaning of "treated as a speaker or publisher" in section 230(c)(1).

A. The Commission's Power to Interpret Section 230 of the Communications Decency Act

Section 201(b) of the Communications Act (Act) empowers the Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out this chapter."[45] Under this authority, the FCC should promulgate rules to resolve ambiguities in Section 230. The Supreme Court has confirmed that "the grant in section 201(b) means what it

[45] 47 U.S.C. § 201(b).

says: The FCC has rulemaking authority to carry out the 'provisions of this Act.'" Section 230, in turn, was incorporated into the Act – in the same portion of the Act, Title II, as section 201(b) – by the Telecommunications Act of 1996 (1996 Act). The fact that section 230 was enacted after section 201(b) is of no consequence; the Supreme Court repeatedly has held that the Commission's section 201(b) rulemaking power extends to all subsequently enacted provisions of the Act, specifically identifying those added by the Telecommunications Act of 1996.[46] Thus, the Commission has authority under section 201(b) to initiate a rulemaking to implement section 230. That broad rulemaking authority includes the power to clarify the language of that provision, as requested in the petition.

The Commission has authority to implement section 230 through regulation even if this section was added to the 1934 Act through the amendments in the Telecommunications Act of 1996. It does not matter if the provision specifically mentions or contemplates FCC regulation. For instance, section 332(c)(7), which was also added to the Act by the 1996 Act, limits State and local decision-making on the placement, construction, or modification of certain wireless service facilities. The section makes no mention of FCC authority, only alluding to the Commission in passing and giving it no role in the provision's implementation. The Supreme Court nonetheless, upheld Commission's authority to issue regulations pursuant to section

[46] AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366, 378 (1999) ("We think that the grant in § 201(b) means what it says: The FCC has rulemaking authority to carry out the "provisions of this Act," which include §§ 251 and 252, added by the Telecommunications Act of 1996"); City of Arlington v. FCC, 668 F.3d 229, 250 (5th Cir. 2012), aff'd, 569 U.S. 290 (2013) ("Section 201(b) of that Act empowers the Federal Communications Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out [its] provisions. Of course, that rulemaking authority extends to the subsequently added portions of the Act.").

332(c)(7) for the simple reason that it was codified within the 1934 Act, and section 201(b) empowers the Commission to promulgate rules interpreting and implementing the entire Act.[47]

Similarly, in Iowa Utilities, the Supreme Court ruled that the FCC had rulemaking authority to implement sections 251 and 252 of the Act.[48] As with section 332, these sections did not explicitly grant the Commission power over all aspects of their implementation, arguably excluding intrastate and other areas. Nonetheless, the Court ruled that "§ 201(b) explicitly gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies."[49] These two decisions, and their underlying rationales, compel the same result for a Commission rulemaking to interpret section 230, and the rationale is simple and inarguable: if Congress chooses to codify a section into the 1934 Communications Act, then section 201(b) gives the FCC the power to clarify and implement it through regulation.

Neither section 230's text, nor any speck of legislative history, suggests any congressional intent to preclude the Commission's implementation. This silence further underscores the presumption that the Commission has power to issue regulations under section 230. As the Fifth Circuit noted with respect to section 332(c)(7), "surely Congress recognized that it was legislating against the background of the Communications Act's general grant of rulemaking authority to the FCC." [50] Accordingly, if Congress wished to exclude the Commission from the interpretation of section 230, "one would expect it to have done so explicitly." Congress did not do so and, as was the case for section 332(c)(7), that decision

[47] City of Arlington, 569 U.S. at 293 ("Of course, that rulemaking authority [of section 201(b)] extends to the subsequently added portions of the Act").
[48] Iowa Util. Bd., 525 U.S. at 378-87.
[49] Iowa Util. Bd., 525 U.S. at 380.
[50] Arlington, 668 F.3d at 250.

opens an ambiguity in section 230 that the Commission may fill pursuant to its section 201(b) rulemaking authority.

B. Background to Section 230

Section 230 reflects a congressional response to a New York state case, Stratton Oakmont, Inc. v. Prodigy Servs. Co., decided in 1995.[51] In Stratton Oakmont, a New York trial court reasoned that Prodigy had become a "publisher" under defamation law because it voluntarily deleted some messages from its message boards "on the basis of offensiveness and 'bad taste,'" and was liable for the acts of its agent, the "Board Leader" of the message board, who it had hired to monitor postings on its bulletin board. The court held that Prodigy, having undertaken an affirmative duty to remove content, therefore was legally responsible for failing to remove an allegedly defamatory posting.[52] The U.S. Court of Appeals for the Ninth Circuit explained that: "[t]he Stratton Oakmont court concluded that when a platform engages in content

[51] Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC, 521 F.3d 1157, 1163 (9th Cir. 2008) ("Section 230 was prompted by a state court case holding Prodigy responsible for a libelous message posted on one of its financial message boards"); Barnes v. Yahoo!, Inc., 570 F.3d 1096, 1101 (9th Cir. 2009) ("This is not surprising, because, as we and some of our sister circuits have recognized, Congress enacted the Amendment in part to respond to a New York state court decision, Stratton Oakmont, [citations omitted,] which held that an internet service provider could be liable for defamation."); Barrett v. Rosenthal, 40 Cal. 4th 33, 44, 146 P.3d 510, 516 (2006) ("The legislative history indicates that section 230 was enacted in response to an unreported New York trial court case."); Sen. Rep. No. 104-230, 2d. Session at 194 (1996) ("One of the specific purposes of [section 230] is to overrule Stratton Oakmont v. Prodigy and any other similar decisions"); see also H.R. Conf. Rep. No. 104-458, at 208 ("The conferees believe that [decisions like Stratton Oakmont] create serious obstacles to the important federal policy of empowering parents to determine the content of communications their children receive through interactive computer services"); 141 Congressional Record H8469–H8470 (daily ed., June 14, 1995) (statement of Rep. Cox, referring to disincentives created by the Stratton Oakmont decision); Blumenthal v. Drudge, 992 F. Supp. 44, 52 n.13 (D.D.C. 1998) ("the legislative history makes clear that one of the primary purposes of Section 230 was to overrule the Stratton Oakmont decision").

[52] Stratton Oakmont, 1995 WL 323720 at *4.

moderation, or 'some voluntary self-policing,' the platform becomes 'akin to a newspaper publisher, and thus responsible for messages on its bulletin board that defamed third parties.'"[53]

Stratton Oakmont applied established tort law, which makes "publishers" liable for defamatory material.[54] Traditionally, tort law defines "publication" as simply the "communication intentionally or by a negligent act to one other than the person defamed."[55] But because the publication element of a defamation claim can also be satisfied when someone unreasonably fails to remove a communication exhibited via means in his possession or control, the Stratton Oakmont court concluded that Prodigy's content moderation or "voluntary self-policing" of the bulletin board rendered Prodigy a publisher of a defamatory statement on its board. Therefore, Prodigy was liable as a publisher.[56]

Stratton Oakmont distinguishes an earlier case, Cubby, Inc. v. CompuServe, Inc.,[57] which ruled an internet bulletin board was not the publisher of material on its bulletin board. The key distinguishing factor was that in Cubby, CompuServe did not moderate postings. The court ruled that CompuServe was not a publisher, but rather what tort law terms a "distributor," i.e., one "who merely transmit[s] defamatory content, such as news dealers, video rental outlets,

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[53] Fair Hous. Council, 521 F.3d at 1163.
[54] Barnes, 570 F.3d at 1104, citing W. Page Keeton, et al., Prosser and Keeton on the Law of Torts § 113, at 799 (5th ed. 1984) ("[E]veryone who takes part in the publication, as in the case of the owner, editor, printer, vendor, or even carrier of a newspaper is charged with publication."); see also Cianci v. New Times Publ'g Co., 639 F.2d 54, 60–61 (2d Cir.1980) (noting the "black-letter rule that one who republishes a libel is subject to liability just as if he had published it originally").
[55] Restatement (Second) of Torts § 577.
[56] Stratton Oakmont, 1995 WL 323710 at *5 ("PRODIGY's conscious choice, to gain the benefits of editorial control, has opened it up to a greater liability than CompuServe and other computer networks that make no such choice."); Barnes, 570 F.3d at 1102 ("publication involves reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content"); see Rodney A. Smolla, Law of Defamation § 4:77 (2d ed., 1999).
[57] Cubby, 776 F.Supp. 135.

bookstores, libraries, and other distributors and vendors."[58] "Distributors" are subject to liability "if, but only if, they know or have reason to know of the content's defamatory character."[59] Thus, publishers had strict liability for materials they published, whereas distributors only had liability for publishing defamation with actual or constructive knowledge of its defamatory character.[60] The Stratton Oakmont court reasoned that, in Cubby, CompuServe "had no opportunity to review the contents of the publication at issue before it was uploaded into CompuServe's computer banks," and, therefore, CompuServe had no liability for defamatory posts on platforms that it owned and controlled as distributor.[61]

While following established common law tort rules, the Stratton Oakmont and Cubby cases presented internet platforms with a difficult choice: voluntarily moderate unlawful or obscene content and thereby become liable for all messages on their bulletin boards, or do nothing and allow unlawful and obscene content to cover their bulletin boards unfiltered. In litigation, Prodigy claimed that the "sheer volume" of message board postings it received—by our current standards a humble "60,000 a day"—made manually reviewing every message impossible. If forced to choose between taking responsibility for all messages and deleting no messages at all, it would take the latter course.[62] Thus, given the technological differences between an internet platform and a bookstore or library, the former's ability to aggregate a much greater volume of information, traditional liability rules became strained. Tort law risked dis-incentivizing platforms from editing or moderating any content for fear they would become liable for all third-party content.

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[58] Smolla § 4:92.
[59] Restatement (Second) of Torts § 581(1) (1977).
[60] Prosser, supra note 54, § 113 at 803.
[61] Stratton Oakmont, 1995 WL 323710 at *2-3.
[62] Stratton Oakmont, 1995 WL 323710 at *3.

Congress intended section 230 to address this difficult liability problem, but nothing in the law's history, purpose or text allows for the conclusion that internet platforms should avoid all responsibility for their own editing and content-moderating decisions. Indeed, section 230 was originally titled the "Online Family Empowerment" amendment to the Communications Decency Act, which was titled, "protection for private blocking and screening of offensive material." [63] Responding to pornography and obscene material on the web, Congress designed section 230 to encourage platforms to moderate specific types of content, mostly related to sexual material inappropriate to minors. Congress did not intend a vehicle to absolve internet and social media platforms—which, in the age of dial-up internet bulletin boards, such as Prodigy, did not exist—from all liability for their editorial decisions.

Representatives Christopher Cox and Ron Wyden floated the bill that became section 230 as an alternative to Senator J. James Exon's bill that criminalized the transmission of indecent material to minors.[64] In public comments, Representative Cox explained that the section 230 would reverse Stratton Oakmont and advance the regulatory goal of allowing families greater power to control online content.[65] The final statute reflected his stated policy: "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

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[63] Telecommunications Act of 1996, Pub. L. No. 104-104, title V, Sec. 509 (1996).
[64] Robert Cannon, The Legislative History of Senator Exon's Communications Decency Act: Regulating Barbarians on the Information Superhighway, 49 Fed. Comm. L.J. 51 (1996); Felix T. Wu, Collateral Censorship and the Limits of Intermediary Immunity, 87 Notre Dame L. Rev. 293, 316 (2011); 141 Cong. Rec. H8468-69 (daily ed. Aug. 4, 1995); Ashcroft v. Am. Civil Liberties Union, 535 U.S. 564, 564 (2002) ("[T]he Communications Decency Act reflected Congress's response to the proliferation of pornographic, violent and indecent content on the web Congress' first attempt to protect children from exposure to pornographic material on the Internet.").
[65] See 141 Cong. Rec. H8469-70 (daily ed. Aug. 4, 1995) (statement of Rep. Cox).

services."[66] The comments in the Congressional record from supporting congressmen and women—and it received strong bi-partisan support—reveal an understanding that the Online Family Empowerment amendment, now codified as section 230, as a non-regulatory approach to protecting children from pornography,[67] intended to provide incentives for "Good Samaritan" blocking and screening of offensive material.

C. Section 230(c)'s Structure

To further these goals, Congress drafted the "Good Samaritan" exception to publisher liability. Section 230(c)(1) has a specific focus: it prohibits "treating" "interactive computer services," i.e., internet platforms, such as Twitter or Facebook, as "publishers." But, this provision only concerns "information" provided by third parties, i.e., "another internet content provider"[68] and does not cover a platform's own content or editorial decisions.

The text of section 230(c)(1) states:

(c) Protection for "Good Samaritan" blocking and screening of offensive material:

(1) Treatment of publisher or speaker

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[66] 47 U.S.C. § 230(b)(3).

[67] See 141 Cong. Rec. H8470 (1995) (statement of Rep. White) ("I want to be sure we can protect [children] from the wrong influences on the Internet. But . . . the last person I want making that decision is the Federal Government. In my district right now there are people developing technology that will allow a parent to sit down and program the Internet to provide just the kind of materials that they want their child to see. That is where this responsibility should be, in the hands of the parent. That is why I was proud to cosponsor this bill that is what this bill does . . . ."); id., (statement of Rep. Lofgren) ("[The Senate approach] will not work. It is a misunderstanding of the technology. The private sector is out giving parents the tools that they have. I am so excited that there is more coming on. I very much endorse the Cox-Wyden amendment . . . .").

[68] 47 U.S.C. § 230(c)(1).

> No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

Section (c)(2) also has a specific focus: it eliminates liability for interactive computer services that act 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."[69]

Subsection (c)(2) governs the degree to which some of the platform's own content moderation decisions receive any legal protection, stating:

> "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 . . . ."

Here, Congress protects "any action . . . taken in good faith to restrict access to or availability of material." This means any social media platform's editorial judgment, moderation, content editing or deletion receives legal immunity, but the plain words of the provision indicate that this protection only covers decisions to restrict access to certain types of enumerated content. As discussed infra, these categories are quite limited and refer primarily to traditional areas of media regulation—also consistent with legislative history's concern that private regulation could create family-friendly internet spaces—and only actions within these categories taken in "good faith."

[69] 47 U.S.C. § 230(c)(2).

D. Expansive Court Rulings Tied to Early Platforms and Outdated Technology

Courts have recognized that "Congress enacted this provision for two basic policy reasons: to promote the free exchange of information and ideas over the Internet and to encourage voluntary monitoring for offensive or obscene material."[70] Congress intended sections 230(c)(1) and (c)(2) to protect platform openness and monitoring for certain specific issues. But, as discussed infra, ambiguous language in these statutes allowed some courts to broadly expand section 230's immunity from beyond its original purpose into a bar any legal action or claim that involves even tangentially "editorial judgment."[71] These subsequent protections established from "speaker or publisher" are overly broad and expansive, and often have absolutely nothing to do with the original harm section 230 was meant to remedy: relieving platforms of the burden of reading millions of messages to detect for defamation as Stratton Oakmont would require. Far and above initially intended viewer protection, courts have ruled section 230(c)(1) offers immunity from contracts,[72] consumer fraud,[73] revenge pornography,[74]

[70] Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1122 (9th Cir. 2003).
[71] See, e.g., Sikhs for Justice "SFJ", Inc. v. Facebook, Inc., 144 F.Supp.3d 1088, 1094–1095 (N.D.Cal. 2015).
[72] Caraccioli v. Facebook, Inc., 167 F. Supp.3d 1056, 1064-66 (N.D. Cal. 2016) (dismissing breach of contract claim and Cal. Bus. & Prof. Code § 17200 unfair practices claim); Lancaster v. Alphabet Inc., No. 2016 WL 3648608, at *5 (N.D. Cal. July 8, 2016) (dismissing claim for breach of covenant of good faith and fair dealing); Jurin v. Google, Inc., 695 F. Supp. 2d 1117, 1122–23 (E.D. Cal. 2010) (dismissing claim for fraud); Fed. Agency of News LLC, et al. v. Facebook, Inc., 395 F. Supp. 3d 1295 (N.D. Cal. 2019) (dismissing discrimination claims under Title II and 42 U.S.C. § 1983); Obado v. Magedson, 43 Media L. Rep. 1737 (D.N.J. 2014) (dismissing claim for promissory estoppel), aff'd, 612 F. App'x 90 (3d Cir. 2015).
[73] See Gentry v. eBay, Inc., 121 Cal. Rptr. 2d 703 (Cal. Ct. App. 2002); Hinton v. Amazon, 72 F. Supp. 3d 685, 687 (S. D. Miss. 2014); Oberdorf v. Amazon, 295 F. Supp. 3d 496 (Mid. D. PA Dec. 21, 2017).
[74] Jones v. Dirty World Entertainment Holding LLC, 755 F.3d 398 (6th Cir. 2014); S.C. v. Dirty World LLC, 40 Media L. Rep. 2043 (W.D. Mo. 2012); Poole v. Tumblr, Inc., 404 F. Supp. 3d 637 (D. Conn. 2019).

anti-discrimination civil rights obligations,[75] and even assisting in terrorism.[76] By expanding protections beyond defamation, these courts extend to platforms a privilege to ignore laws that every other communications medium and business must follow and that are no more costly or difficult for internet platforms to follow than any other business.

The problem of overly expansive interpretations for section 230 is not merely hypothetical. Tens of thousands of Americans have reported, among other troubling behaviors, online platforms "flagging" content as inappropriate, even though it does not violate any stated terms of service; making unannounced and unexplained changes to company policies that have the effect of disfavoring certain viewpoints; and deleting content and entire accounts with no warning, no rationale, and no recourse. As FCC Commissioner Brendan Carr has observed, social media such as Twitter "punis[h] speakers based on whether it approves or disapproves of their politics."[77] One can hardly imagine a result more contrary to Congress's intent to preserve on the internet "a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity."[78]

Further, by making contract and consumer fraud claims concerning moderation unenforceable under section 230, courts seriously injure section 230's goal "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services."[79] Content moderation policies become, as FCC Commissioner Brendan

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[75] Sikhs for Justice "SFJ", Inc., 144 F. Supp.3d 1088, 1094-1095.
[76] Force, 934 F.3d at 57.
[77] Jon Brokin, Arstechnica, FCC Republican excitedly endorses Trump's crackdown on social media, May 29, 2020, https://arstechnica.com/tech-policy/2020/05/fcc-republican-excitedly-endorses-trumps-crackdown-on-social-media/.
[78] 47 U.S.C. § 230(a)(1).
[79] 47 U.S.C. § 230(b)(2).

Carr recently described Twitter's moderation policy, "free speech for me, but not for thee." [80] Further, if interactive computer services' contractual representations about their own services cannot be enforced, interactive computer services cannot distinguish themselves. Consumers will not believe, nor should they believe, representations about online services. Thus, no service can credibly claim to offer different services, further strengthening entry barriers and exacerbating competition concerns.

Much of this overly expansive reading of section 230 rests on a selective focus on certain language from Zeran, a case from the United States of Appeals for the Fourth Circuit.[81] The line of court decisions expanding section 230 in such extravagant ways relies on Zeran's reference to: "lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred."[82] This language arguably provides full and complete immunity to the platforms for their own publications, editorial decisions, content-moderating, and affixing of warning or fact-checking statements.[83] But, it is an erroneous interpretation, plucked from its surrounding context and thus removed from its more accurate meaning.

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[80] News Break, Brendan Carr Decries Twitter Censorship as 'Free Speech for Me, but Not for Thee, June 11, 2020, https://www.newsbreak.com/news/1582183608723/brendan-carr-decries-twitter-censorship-as-free-speech-for-me-but-not-for-thee.

[81] Zeran, 129 F.3d at 327.

[82] Zeran, 129 F.3d at 330.

[83] These lines from Zeran have led some courts to adopt the so-called three part section 230(c)(1) test: (1) whether Defendant is a provider of an interactive computer service; (2) if the postings at issue are information provided by another information content provider; and (3) whether Plaintiff's claims seek to treat Defendant as a publisher or speaker of third party content. Okeke v. Cars.com, 966 N.Y.S.2d 843, 846 (Civ. Ct. 2013), citing Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 564 F. Supp. 2d 544, 548 (E.D. Va. 2008), aff'd, 591 F.3d 250 (4th Cir. 2009). As the text explains, this so-called test errs in the third prong. The question is not whether the claim treats defendant as a publisher or speaker—after all, virtually every legal claim (contract, fraud, civil rights violations) would do so. The question is whether liability is

In fact, the quotation refers to third party's exercise of traditional editorial function—not those of the platforms. As the sentence in Zeran that is immediately prior shows, section 230 "creates a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service." In other words, the liability from which section 230(c)(1) protects platforms is that arising from the content that the third-party posts—i.e. the "information" posted by "another information provider" and those information providers' editorial judgments.

In light of the history of publisher and distributor liability law upon which section 230 draws, as well as its actual text, the best way to interpret the distinction between section 230(c)(1) and (c)(2) is as follows: Section 230(c)(1) applies to acts of omission—to a platform's failure to remove certain content. In contrast, section 230(c)(2) applies to acts of commission—a platform's decisions to remove. Section 230(c)(1) does not give complete immunity to all a platform's "editorial judgments."

E. Need for FCC Regulations: Ambiguities in Section 230

Section 230 contains a number of ambiguities that courts have interpreted broadly in ways that are harmful to American consumers, free speech, and the original objective of the statute. First, as discussed below, uncertainty about the interplay between section 230(c)(1) and (c)(2) has led many courts to a construction of the two provisions that other courts consider to be anomalous or lead to rendering section 230(c)(2) superfluous. Second, the interplay between section 230(c)(1) and (c)(2) does not make clear at what point a platform's moderation and presentation of content becomes so pervasive that it becomes an information content provider

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based on the content of third-party information. Requiring platforms to monitor the content of thousands of posts was the impetus behind section 230.

and, therefore, outside of section 230(c)(1)'s protections. Third, critical phrases in section 230(c)(2)— the "otherwise objectionable" material that interactive computer service providers may block without civil liability; and the "good faith" precondition for activating that immunity—are ambiguous on their face. And, with respect to the former, courts have posited starkly divergent interpretations that can only create uncertainty for consumers and market participants. Finally, what it means to be an "information content provider" or to be "treated as a publisher or speaker" is not clear in light of today's new technology and business practices. The Commission's expertise makes it well equipped to address and remedy section 230's ambiguities and provider greater clarity for courts, platforms, and users.

1. The Interaction Between Subparagraphs (c)(1) and (c)(2)

Ambiguity in the relationship between subparagraphs (c)(1) and (c)(2) has resulted in courts reading section 230(c)(1) in an expansive way that risks rendering (c)(2) a nullity. Numerous district court cases have held that section 230(c)(1) applies to removals of content, not section 230(b)(2) with its exacting "good faith" standard."[84] For instance, in Domen v. Vimeo, a federal district court upheld the removal of videos posted by a religious groups' questioning a California law's prohibition on so-called sexual orientation change efforts (SOCE), and the law's effect on pastoral counseling. Finding the videos were "harassing," the court upheld their removal under both section 230(c)(1) and section (c)(2), ruling that these sections are co-extensive, rather than aimed at very different issues.[85] In doing so, the court rendered section

[84] Domen v. Vimeo, Inc., 433 F. Supp. 3d 592, 601 (S.D.N.Y. 2020); Lancaster v. Alphabet, Inc., 2016 WL 3648608 (N.D. Cal. July 28, 2016); Sikhs for Justice "SFJ", Inc., 144 F.Supp.3d 1088.
[85] Domen, 433 F. Supp. 3d at 601 ("the Court finds that Vimeo is entitled to immunity under either (c)(1) or (c)(2)").

230(c)(2) superfluous—reading its regulation of content removal as completely covered by section 230(c)(1)'s regulation of liability for user-generated third party content.

The Commission should promulgate a regulation to clarify the relationship between the two provisions so that section 230(c)(1) does not render section 230(c)(1) superfluous. To determine how these subparagraphs interact—or as E.O. 13925 specifically instructs: "to clarify and determine the circumstances under which a provider of an interactive computer service that restricts access to content in a manner not specifically protected by subparagraph (c)(2)(A) may also not be able to claim protection under subparagraph (c)(1),"[86] the FCC should determine whether the two subsections' scope is additive or not. While some courts have read section 230(c)(1) "broadly,"[87] few have provided any principled distinction between the two subsections.

NTIA urges the FCC to follow the canon against surplusage in any proposed rule.[88] Explaining this canon, the Supreme Court holds, "[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . . ."[89] The Court emphasizes that the canon "is strongest when an interpretation would render superfluous another part of the same statutory scheme."[90]

While some district courts, such as Domen discussed above, have ruled that section 230(c)(1) applies to content removal, which is section 230(c)(2)'s proper domain, those courts

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[86] E.O. 13925 § 2(b)(i).
[87] See Force, 934 F.3d at 64.
[88] Marx v. General Revenue Corp., 568 U.S. 371, 385 (2013).
[89] Corley v. United States, 556 U.S. 303, 314 (2009), quoting Hibbs v. Winn, 542 U.S. 88, 101 (2004).
[90] Marx, 568 U.S. at 386; see also Fair Hous. Council, 521 F.3d 1157 at 1167-68 (avoiding superfluity in interpret the "developer" exception in Section 230(f)(3) of the CDA).

that have explicitly inquired into the proper relationship between the two subparagraphs have followed the surplusage canon—ruling that the provisions cover separate issues[91] and "address different concerns."[92] "Section 230(c)(1) is concerned with liability arising from information provided online," while "[s]ection 230(c)(2) is directed at actions taken by Internet service providers or users to restrict access to online information."[93] Thus, "[s]ection 230(c)(1) provides immunity from claims by those offended by an online publication, while section 230(c)(2) protects against claims by those who might object to the restriction of access to an online publication."[94] Courts have refused to "interpret[] the CDA . . . [to allow] the general immunity in (c)(1) [to] swallow[] the more specific immunity in (c)(2)" because subsection (c)(2) immunizes only an interactive computer service's "actions taken in good faith."[95]

NTIA suggests that the FCC can clarify this relationship between section 230(c)(1) and section 230(c)(2) by establishing the following points. First, the FCC should make clear that section 230(c)(1) applies to liability directly stemming from the information provided by third-party users. Section 230(c)(1) does not immunize a platforms' own speech, its own editorial decisions or comments, or its decisions to restrict access to content or its bar user from a platform. Second, section 230(c)(2) covers decisions to restrict content or remove users.

NTIA, therefore, requests that the Federal Communications Commission add the below Subpart E to 47 CFR Chapter I:

> **Subpart E. Interpreting Subsection 230(c)(1) and Its Interaction With Subsection 230(c)(2).**

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[91] See, e.g., Zango, 568 F.3d at 1175 (holding that (c)(2) is a "different . . . statutory provision with a different aim" than (c)(1)).
[92] Barrett, 40 Cal. 4th 33.
[93] Id. at 49 (emphasis added).
[94] Id. (emphasis added).
[95] e-ventures Worldwide, LLC v. Google, Inc., (M.D. Fla. Feb. 8, 2017) 2017 U.S. Dist. LEXIS 88650, at *9.

§ 130.01
As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

(a) 47 U.S.C. 230(c)(1) applies to an interactive computer service for claims arising from failure to remove information provided by another information content provider. Section 230(c)(1) has no application to any interactive computer service's decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service. Any applicable immunity for matters described in the immediately preceding sentence shall be provided solely by 47 U.S.C. § 230(c)(2).

(b) An interactive computer service is not a publisher or speaker of information provided by another information content provider solely on account of actions voluntarily taken in good faith to restrict access to or availability of specific material in accordance with subsection (c)(2)(A) or consistent with its terms of service or use.

2. The Meaning of Section 230(c)(2)

Section 230(c)(2)'s ambiguities include (1) how to interpret "otherwise objectionable" and (2) "good faith."

a. "Otherwise objectionable"

If "otherwise objectionable" means any material that any platform "considers" objectionable, then section 230(b)(2) offers de facto immunity to all decisions to censor content. And some district courts have so construed section 230(c)(2).[96] But, many courts recognize

[96] Domen v. Vimeo, Inc., 2020 U.S. Dist. L 7935 (S.D.N.Y. Jan. 15, 2020), appeal filed No 20-616 (Feb. 18, 2020) ("Section 230(c)(2) is focused upon the provider's subjective intent of what is 'obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable.' That section 'does not require that the material actually be objectionable; rather, it affords protection for blocking material "that the provider or user considers to be' objectionable."'); Langdon v. Google, Inc., 474 F. Supp. 2d 622, 631 (D. Del. 2007) ("Plaintiff argues there was no refusal to run his ads on the basis they were obscene or harassing, and that Defendants cannot create 'purported reasons for not running his ads.' He omits, however, reference to that portion of § 230 which provides immunity from suit for restricting material that is 'otherwise objectionable.'").

limiting principles. Many look to the statutory canon of ejusdem generis, which holds that catch-all phases at the end of a statutory lists should be construed in light of the other phrases.[97] In this light, section 230(c)(2) only applies to obscene, violent, or other disturbing matters.[98]

Understanding how the section 230(c)(2) litany of terms has proved difficult for courts in determining how spam filtering and filtering for various types of malware fits into the statutory framework. Most courts have ruled that "restrict[ing] access" to spam falls within the section

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[97] Washington State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler, 537 U.S. 371, 372 (2003) ("under the established interpretative canons of noscitur a sociis and ejusdem generis, where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar to those enumerated by the specific words").

[98] Darnaa, LLC v. Google, Inc., 2016 WL 6540452 at *8 (N.D. Cal. 2016) ("The context of § 230(c)(2) appears to limit the term to that which the provider or user considers sexually offensive, violent, or harassing in content."); Song Fi, Inc. v. Google, Inc., 108 F. Supp. 3d 876, 883 (N.D. Cal. 2015) ("First, when a statute provides a list of examples followed by a catchall term (or 'residual clause') like 'otherwise objectionable,' the preceding list provides a clue as to what the drafters intended the catchall provision to mean," citing Circuit City Stores v. Adams, 532 U.S. 105, 115 (2001)). This is the rationale for the canon of construction known as eiusdem generis (often misspelled ejusdem generis), which is Latin for 'of the same kind); National Numismatic v. eBay, 2008 U.S. Dist. LEXIS 109793, at *25 (M.D. Fla. Jul. 8, 2008) ("Section 230 is captioned 'Protection for 'Good Samaritan' blocking and screening of offensive material,' yet another indication that Congress was focused on potentially offensive materials, not simply any materials undesirable to a content provider or user"); Sherman v. Yahoo! Inc., 997 F. Supp. 2d 1129 (S.D. Cal. 2014) (text messages allegedly violate Telephone Consumer Protection Act; Yahoo! raised section 230(c)(2)(B) as a defense) ("The Court declines to broadly interpret 'otherwise objectionable' material to include any or all information or content. The Ninth Circuit has expressed caution at adopting an expansive interpretation of this provision where providers of blocking software 'might abuse th[e CDA] immunity to block content for anticompetitive purposes or merely at its malicious whim, under the cover of considering such material "otherwise objectionable" under § 230(c)(2)."); Goddard v. Google, Inc., 2008 U.S. Dist. LEXIS 101890 (N.D. Cal. Dec. 17, 2008) ('[i]t is difficult to accept . . . that Congress intended the general term "objectionable" to encompass an auction of potentially-counterfeit coins when the word is preceded by seven other words that describe pornography, graphic violence, obscenity, and harassment.' In the instant case, the relevant portions of Google's Content Policy require that MSSPs provide pricing and cancellation information regarding their services. These requirements relate to business norms of fair play and transparency and are beyond the scope of § 230(c)(2).").

230(c)(2) framework, although that is difficult perhaps to see as a textual matter.[99] Spam, though irritating and destructive of the online experience, does not fit clearly into the litany in section 230, at least as courts have understood this litany.

The spam cases have prompted courts to examine the thread that runs through the list in section 230. A recent Ninth Circuit case perceptively sees the challenge: On one hand, "decisions recognizing limitations in the scope of immunity [are] persuasive,"[100] and "interpreting the statute to give providers unbridled discretion to block online content would . . . enable and potentially motivate internet-service providers to act for their own, and not the public, benefit."[101] In addition, the court did recognize that "the specific categories listed in § 230(c)(2) vary greatly: [m]aterial that is lewd or lascivious is not necessarily similar to material that is violent, or material that is harassing. If the enumerated categories are not similar, they provide little or no assistance in interpreting the more general category. We have previously recognized this concept."[102]

Yet, in fact, the original purpose of the Communications Decency Act—"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

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[99] Asurvio LP v. Malwarebytes Inc., 2020 U.S. Dist. LEXIS 53906 (N.D. Cal. Mar. 26, 2020) (allegation that M is wrongfully classifying A's software as malware); 4PC Drivers Headquarters, LP v. Malwarebytes Inc., 371 F. Supp. 3d 652 (N.D. Cal. 2019) (malware); Shulman v. FACEBOOK.com, 2018 U.S. Dist. LEXIS 113076 (D.D.C. Jul. 9, 2018) (spam); Holomaxx Technologies v. Microsoft Corp., 783 F. Supp. 2d 1097 (N.D. Cal. 2011) (spam); Smith v. Trusted Universal Stds. in Elec. Transactions, Inc., 2010 U.S. Dist. LEXIS 43360 (D. N.J. May 4, 2010) (deletion of spam); e360insight v. Comcast Corp., 546 F. Supp. 2d 605 (N.D. Ill. 2008) (spam); Zango v. Kapersky Lab., 568 F.3d 1169 (9th Cir. 2009) (competitive blocking software).

[100] Enigma Software Grp. USA, v. Malwarebytes, Inc., 946 F.3d 1040, 1050 (9th Cir. 2019).

[101] Id.

[102] Id. at 1051.

material"[103]—suggests that the thread that combines section 230(c)(2)'s concepts are those materials that were objectionable in 1996 and for which there was already regulation—regulation which Congress intended section 230 to provide incentives for free markets to emulate.

The first four adjectives in subsection (c)(2), "obscene, lewd, lascivious, filthy," are found in the Comstock Act as amended in 1909.[104] The Comstock Act prohibited the mailing of "every obscene, lewd, or lascivious, and every filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character."[105] In addition, the CDA used the terms "obscene or indecent," prohibiting the transmission of "obscene or indecent message."[106] The Act's second provision declared unconstitutional in Reno v. ACLU, section 223(d), prohibits the knowing sending or displaying of "any comment, request, suggestion, proposal, image, or other communication that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs, regardless of whether the user of such service placed the call or initiated the communication."[107] This language of "patently offensive . . ." derives from the definition of indecent speech set forth in the Pacifica decision and which the FCC continues to regulate to this day.[108]

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[103] 47 U.S.C. § 230(a)(4).
[104] Section 3893 of the Revised Statutes made by section 211 of the Criminal Code, Act of March 4, 1909, c. 321, 35 Stat. 1088, 1129; United States v. Limehouse, 285 U.S. 424, 425 (1932) (stating that "Section 211 of the Criminal Code (18 USCA § 334) declares unmailable 'every obscene, lewd, or lascivious, and every filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character") (additional citation added). The phrase is repeated in numerous state statutes.
[105] Id. at 424-6.
[106] 47 U.S. § 223(a) (May 1996 Supp.).
[107] 521 U.S. 844 (1997).
[108] FCC v. Pacifica Found., 438 U.S. 726, 732 (1978) ("patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs").

The next two terms in the list "excessively violent" and "harassing" also refer to typical concerns of communications regulation which were, in fact, stated concerns of the CDA itself. Congress and the FCC have long been concerned about the effect of violent television shows, particularly upon children; indeed, concern about violence in media was an impetus of the passage of the Telecommunications Act of 1996, of which the CDA is a part. Section 551 of the Act, entitled Parental Choice in Television Programming, requires televisions over a certain size to contain a device, later known at the V-chip. This device allows viewers to block programming according to an established rating system.[109] The legislation led to ratings for broadcast television that consisted of violent programming.[110] The FCC then used this authority to require televisions to allow blocking technology.[111]

And, of course, Congress and the FCC have long regulated harassing wire communications. Section 223, Title 47, the provision which the CDA amended and into which the CDA was in part codified, is a statute that prohibits the making of "obscene or harassing"

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[109] 47 U.S.C. § 303(x). See Technology Requirements to Enable Blocking of Video Programming Based on Program Ratings, 63 Fed. Reg. 20, 131 (Apr. 23, 1998) ("[T]he Commission is amending the rules to require . . . technological features to allow parents to block the display of violent , sexual, or other programming they believe is harmful to their children. These features are commonly referred to as 'v-chip' technology."). Finding that "[t]here is a compelling governmental interest in empowering parents to limit the negative influences of video programming that is harmful to children," Congress sought to "provid[e] parents with timely information about the nature of upcoming video programming and with the technological tools" to block undesirable programming by passing the Telecommunications Act of 1996 (the "Telecommunications Act").

[110] FCC News, Commission Finds Industry Video Programming Rating System Acceptable, Report No. GN 98-3 (Mar. 12, 1998), available at https://transition.fcc.gov/Bureaus/Cable/News_Releases/1998/nrcb8003.html.

[111] Amy Fitzgerald Ryan, Don't Touch That V-Chip: A Constitutional Defense of the Television Program Rating Provisions of the Telecommunications Act of 1996, 87 Geo. L.J. 823, 825 (1999), citing Lawrie Mifflin, TV Networks Plan Ratings System, Orange County Reg., Feb. 15, 1996, at A1.

telecommunications.[112] These harassing calls include "mak[ing] or caus[ing] the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number" or "mak[ing] repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication."[113] Roughly half of the States also outlaw "harassing" wire communications via telephone.[114] Congress enacted the Telephone Consumer Protection Act (TCPA), recently upheld in most part by the Supreme Court,[115] to ban "automated or prerecorded telephone calls, regardless of the content or the initiator of the message," that are considered "to be a nuisance and an invasion of privacy."[116]

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[112] 47 U.S.C. § 223.

[113] 47 U.S.C. § 223(a)(1)(D) & (E) (2012).

[114] See, e.g., (Arizona) Ariz. Rev. Stat. § 13-2916 ("It is unlawful for any person, with intent to terrify, intimidate, threaten or harass a specific person or persons, to do any of the following: 3. Otherwise disturb by repeated anonymous, unwanted or unsolicited electronic communications the peace, quiet or right of privacy of the person at the place where the communications were received."); (California) Cal. Pen. Code § 653m(b) ("Every person who, with intent to annoy or harass, makes repeated telephone calls or makes repeated contact by means of an electronic communication device, or makes any combination of calls or contact, to another person is, whether or not conversation ensues from making the telephone call or contact by means of an electronic communication device, guilty of a misdemeanor. Nothing in this subdivision shall apply to telephone calls or electronic contacts made in good faith or during the ordinary course and scope of business."); (Maryland) Md. Code Ann., Crim. Law § 3-804 ("A person may not use telephone facilities or equipment to make: (1) an anonymous call that is reasonably expected to annoy, abuse, torment, harass, or embarrass another; (2) repeated calls with the intent to annoy, abuse, torment, harass, or embarrass another"); (Oklahoma) 21 Okl. St. § 1172 ("It shall be unlawful for a person who, by means of a telecommunication or other electronic communication device, willfully either: 6. In conspiracy or concerted action with other persons, makes repeated calls or electronic communications or simultaneous calls or electronic communications solely to harass any person at the called number(s)").

[115] Barr v. Am. Ass'n of Political Consultants, 140 S. Ct. 2335 (2020) (upholding the Act except for its debt-collection exception).

[116] Telephone Consumer Protection Act of 1991, 105 Stat. 2394, 2395, codified at 15 U.S.C. § 6101.

Thus, the cases that struggled over how to fit spam into the list of section 230(c)(2) could simply have analogized spam as similar to harassing or nuisance phone calls.

The regulatory meanings, as understood in 1996 and used in the Communications Decency Act, itself, constitute the thread that unites the meanings of "obscene, lewd, lascivious, filthy, excessively violent, and harassing." All deal with issues involving media and communications content regulation intended to create safe, family environments. Compelling that conclusion is "the presumption of consistent usage—the rule of thumb that a term generally means the same thing each time it is used . . . [particularly for] terms appearing in the same enactment."[117] To ensure clear and consistent interpretations of the terms used in subsection 230(c)(2), NTIA requests, therefore, that the FCC add the below Subpart E to 47 CFR Chapter I:

> **Subpart E. Clarifying Subsection 230(c)(2).**
> § 130.02
> As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:
>
> **(a) "obscene," "lewd," "lascivious," and "filthy"**
> The terms "obscene," "lewd," "lascivious," and "filthy" mean material that:
> i. taken as a whole, appeals to the prurient interest in sex or portrays sexual conduct in a patently offensive way, and which, taken as a whole, does not have serious literary, artistic, political, or scientific value;
> ii. depicts or describes sexual or excretory organs or activities in terms patently offensive as measured by contemporary community standards; to the average person, applying contemporary community standards; or
> iii. signifies the form of immorality which has relation to sexual impurity, and have the same meaning as is given them at common law in prosecutions for obscene libel.
>
> **(b) "excessively violent"**
> The term "excessively violent" means material that:
> i. is likely to be deemed violent and for mature audiences according the Federal Communications Commission's V-chip regulatory regime and TV Parental Guidance, promulgated pursuant to Section 551 of the 1996

[117] United States v. Castleman, 572 U.S. 157, 174 (2014), citing IBP, Inc. v. Alvarez, 546 U.S. 21, 33–34 (2005) (Scalia, J., conc.).

Telecommunications Act, Pub. L. No. 104-104, § 551, 110 Stat. 139-42 (codified at 47 U.S.C. § 303; § 330(c)(4)); or

ii. constitutes or intends to advocate domestic terrorism or international terrorism, each as defined in 18 U.S.C. § 2331 ("terrorism").

(c) "harassing"

The term "harassing" means any material that:

i. that sent by an information content provider that has the subjective intent to abuse, threaten, or harass any specific person and is lacking in any serious literary, artistic, political, or scientific value;

ii. regulated by the CAN-SPAM Act of 2003, 117 Stat. 2699; or

iii. that is malicious computer code intended (whether or not by the immediate disseminator) to damage or interfere with the operation of a computer.

(d) "otherwise objectionable"

The term "otherwise objectionable" means any material that is similar in type to obscene, lewd, lascivious, filthy, excessively violent, or harassing materials.

b. "Good faith"

The phrase "good faith" in section 230(c) is also ambiguous. On one hand, most courts, in interpreting the phrase, have looked to pretext, dishonesty, or refusing to explain wrongful behavior when finding good faith or lack thereof in the removal of content. As the United States Court of Appeals for the Ninth Circuit explains, "unless § 230(c)(2)(B) imposes some good faith limitation on what a blocking software provider can consider 'otherwise objectionable' . . . immunity might stretch to cover conduct Congress very likely did not intend to immunize." Under the generous coverage of section 230(c)(2)(B)'s immunity language, a blocking software provider might abuse that immunity to block content for anticompetitive purposes or merely at its malicious whim, under the cover of considering such material "otherwise objectionable."[118] At the same time, some courts, focusing the words "the provider or user considers to be

[118] Zango, 568 F.3d at 1178 (Fisher, J., concurring). The Ninth Circuit has adopted Judge Fisher's reasoning. See Enigma, 946 F.3d at 1049.

obscene," see the provision's immunity available whenever an interactive computer service simply claims to consider the material as fitting within the provision's categories. Thus, "good faith" simply means the existence of some "subjective intent."[119]

Good faith requires transparency about content moderation disputes processes. In order to qualify for section 230(c)(2)'s immunity, a social media platform, or any interactive computer service, must demonstrate in a transparent way that when it takes action pursuant to section 230(c)(2), it provides adequate notice, reasoned explanation, or a meaningful opportunity to be heard."[120]

To ensure clear and consistent interpretation of the "good faith" standard, NTIA requests that the FCC further add the below to newly requested 47 CFR Chapter I Subchapter E Section 130.02:

> **(e) "good faith"**
> A platform restricts access to or availability of specific material (including, without limitation, its scope or reach) by itself, any agent, or any unrelated party in "good faith" under 47 U.S.C. § (c)(2)(A) if it:
>
> i. restricts access to or availability of material or bars or refuses service to any person consistent with publicly available terms of service or use that state plainly and with particularity the criteria the interactive computer service employs in its content-moderation practices, including by any partially or fully automated processes, and that are in effect on the date such content is first posted;
> ii. has an objectively reasonable belief that the material falls within one of the listed categories set forth in 47 U.S.C. § 230(c)(2)(A);
> iii. does not restrict access to or availability of material on deceptive or pretextual grounds, and does not apply its terms of service or use to restrict access to or availability of material that is similarly situated to material that the interactive computer service intentionally declines to restrict; and
> iv. supplies the interactive computer service of the material with timely notice describing with particularity the interactive computer service's reasonable factual basis for the restriction of access and a meaningful opportunity to respond, unless the interactive computer service has an objectively

[119] Domen, 433 F.Supp. 3d 592.
[120] E.O. 13925, Sec. 2(b).

reasonable belief that the content is related to criminal activity or such notice would risk imminent physical harm to others.

3. Section 230(c)(1) and 230(f)(3)

Section 230(c)(1) places "information content providers," i.e., entities that create and post content, outside its protections. This means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the internet, does not receive the statute's shield. Numerous cases have found that interactive computer service's designs and policies render it an internet content provider, outside of section 230(c)(1)'s protection. But the point at which a platform's form and policies are so intertwined with users' postings so as to render the platform an "information content provider" is not clear.

Courts have proposed numerous interpretations, most influentially in the Ninth Circuit in Fair Housing Council of San Fernando Valley v. Roommates.Com.[121] There, the court found that "[b]y requiring subscribers to provide the information as a condition of accessing its service, and by providing a limited set of pre-populated answers, Roommate becomes much more than a passive transmitter of information."[122] The court continued, "[w]e interpret the term 'development' as referring not merely to augmenting the content generally, but to materially contributing to its alleged unlawfulness. In other words, a website helps to develop unlawful content, and thus falls within the exception to section 230, if it contributes materially to the alleged illegality of the conduct."[123] But, this definition has failed to provide clear guidance, with courts struggling to define "material contribution."[124]

[121] Fair Hous. Council, 521 F.3d at 1166.
[122] Id.
[123] Id. at 1167–68 (emphasis added); see also Dirty World Entertainment, 755 F.3d at 411.
[124] See, e.g., People v. Bollaert, 248 Cal. App. 4th 699, 717 (2016).

Further, not all courts accept the material contribution standard. The Seventh Circuit concludes that "[a] company can, however, be liable for creating and posting, inducing another to post, or otherwise actively participating in the posting of a defamatory statement in a forum that that company maintains."[125] Other circuits conclude that a website becomes an information content provider by "solicit[ing] requests" for the information and then "pa[ying] researchers to obtain it."[126]

This confusion stems from the difference between the way an online bulletin board worked in the 1990s, which simply posted content, and how social media works today. As Federal Trade Commissioner Rohit Chopra explained, new social media shape and control information and online experience often as an expression of platforms' and their advertisers' goals rather than their users':

> "[Section 230] seeks to foster an environment where information and ideas can flourish. If a company is just helping move information from point A to point B, that company is just like the mail carrier or the telegraph company. That makes sense . . . . But the tech market has dramatically shifted in the decades since this law was enacted . . . . I would argue that once platforms started prioritizing their paid predictions, the content became more a reflection of advertisers targeting users, than users' own preferences."[127]

In light of modern technology, the FCC should clarify the circumstances under which an interactive computer service becomes an information content provider. Interactive computer services that editorialize particular user comments by adding special responses or warnings appear to develop and create content in any normal use of the words. Analogously, district

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[125] Huon v. Denton, 841 F.3d 733, 742 (7th Cir. 2016).
[126] FTC v. Accusearch Inc., 570 F.3d 1187, 1199–1200 (10th Cir. 2009).
[127] Rohit Chopra, Tech Platforms, Content Creators, and Immunity, American Bar Association, Section of Antitrust Law Annual Spring Meeting, Washington, D.C. (Mar. 28, 2019) (transcript available online at https://www.ftc.gov/system/files/documents/public_statements/1510713/chopra_-_aba_spring_meeting_3-28-19_0.pdf (last visited June 15, 2020)).

courts have concluded that when interactive computer services' "employees . . . authored comments," the interactive computer services would become content providers.[128] In addition, prioritization of content under a variety of techniques, particularly when it appears to reflect a particularly viewpoint, might render an entire platform a vehicle for expression and thus an information content provider.

To clarify when interactive computer services become information content providers through developing and creating content through the presentation of user-provided material, NTIA requests that the FCC add the below Subpart E to 47 CFR Chapter I:

> **Subpart E. Clarifying Subsection 230(f)(2).**
> § 130.03
> As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:
>
> For purposes of 47 U.S.C. § 230(f)(3), "responsible, in whole or in part, for the creation or development of information" includes substantively contributing to, modifying, altering, presenting or prioritizing with a reasonably discernible viewpoint, commenting upon, or editorializing about content provided by another information content provider.

4. "Treated as a Publisher or Speaker"

Finally, the ambiguous term "treated as a publisher or speaker" is a fundamental question for interpreting that courts in general have not addressed squarely. One of the animating concerns for section 230 was court decisions holding online platforms liable as publishers for third-party speech, when in fact they were merely passive bulletin boards. By prohibiting an interactive computer service from being "treated" as a publisher or speaker, therefore, section 230 could be interpreted as not converting non-publisher platforms into publishers simply because they passively transmit third-party content. That does not, however, mean that the

[128] Huon, 841 F.3d at 742.

statute meant to immunize online platforms when they actually act as publishers and exert significant control over the third-party speech and the message it conveys.

FCC Chairman Pai made a similar point by asking if selective content moderation based on ideology eventually becomes "editorial judgment":

> Are these tech giants running impartial digital platforms over which they don't exercise editorial judgment when it comes to content? Or do they in fact decide what speech is allowed and what is not and discriminate based on ideology and/or political affiliation? [129]

If content-moderating can never, no matter how extreme or arbitrary, become editorializing that no longer remains the "speech of another," then section 230(c)(1) will subsume section 230(c)(2) and eliminate liability for all interactive computer services' decisions to restrict content. Interpreting "speaker or publisher" so broadly is especially harmful when platforms are opaque and deceptive in their content-monitoring policies.

This concern is hardly theoretical, given the highly inconsistent, baffling, and even ideologically driven content moderating decisions that the large interactive computer services have made, at least according to numerous accounts. For instance, one interactive computer service made the editorial decision to exclude legal content pertaining to firearms,[130] content that was deemed acceptable for broadcast television,[131] thereby chilling the speech of a political candidate supportive of gun rights. Another interactive computer service has suppressed the

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[129] Ajit Pai, What I Hope to Learn from the Tech Giants, FCC Blog (Sept. 4, 2018), https://www.fcc.gov/news-events/blog/2018/09/04/what-i-hope-learn-tech-giants.
[130] Facebook, Inc., Facebook Prohibited Content: 7. Weapons, Ammunition, or Explosives, https://www.facebook.com/policies/ads/prohibited_content/weapons (last visited June 15, 2020).
[131] Maria Schultz, Facebook pulls ad from gun-toting Georgia candidate taking on Antifa: 'Big Tech censorship of conservatives must end', Fox News (June 6, 2020), https://www.foxnews.com/politics/facebook-pulls-ad-from-gun-toting-georgia-candidate-big-tech-censorship-of-conservatives-must-end.

speech of an American politician for "glorifying violence"[132] while permitting that of a foreign politician glorifying violence to pass without action,[133] as publicly noted by the FCC Chairman.[134] Still another interactive computer service, purporting to be a document repository and editing service,[135] deleted a controversial paper about a potential therapy for COVID-19,[136] stating simply that it was in violation of the site terms of service.[137] A major food-workers' union has objected to social media-implemented internal communication networks for companies, or "intranets," implementing automated censorship to prevent discussions of unionization.[138]

At common law, as a general matter, one is liable for defamation only if one makes "an affirmative act of publication to a third party."[139] This "affirmative act requirement" ordinarily

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[132] Alex Hern, Twitter hides Donald Trump tweet for 'glorifying violence', The Guardian (May 29, 2020), https://www.theguardian.com/technology/2020/may/29/twitter-hides-donald-trump-tweet-glorifying-violence.
[133] White House official Twitter account (May 29, 2020), https://twitter.com/WhiteHouse/status/1266367168603721728.
[134] Ajit Pai verified Twitter account (May 29, 2020), https://twitter.com/AjitPaiFCC/status/1266368492258816002.
[135] Google, Inc., Google Docs "About" page, https://www.google.com/docs/about/ (last visited June 15, 2020) ("Google Docs brings your documents to life with smart editing and styling tools to help you easily format text and paragraphs. Choose from hundreds of fonts, add links, images, and drawings. All for free . . . . Access, create, and edit your documents wherever you go — from your phone, tablet, or computer — even when there's no connection.").
[136] Thomas R. Broker, et al., An Effective Treatment for Coronavirus (COVID-19), (Mar. 13, 2020), page archived at https://archive.is/BvzkY (last visited June 15, 2020).
[137] Google, Inc., Google Docs result for https://docs.google.com/document/d/e/2PACX-1vTi-g18ftNZUMRAj2SwRPodtscFio7bJ7GdNgbJAGbdfF67WuRJB3ZsidgpidB2eocFHAVjIL-7deJ7/pub (last visited June 15, 2020) ("We're sorry. You can't access this item because it is in violation of our Terms of Service.").
[138] United Food and Commercial Workers International Union, Facebook Censorship of Worker Efforts to Unionize Threatens Push to Strengthen Protections for Essential Workers During COVID-19 Pandemic (June 12, 2020), http://www.ufcw.org/2020/06/12/censorship/.
[139] Benjamin C. Zipursky, Online Defamation, Legal Concepts, and the Good Samaritan, 51 Val. U. L. Rev. 1, 18 (2016) , available at https://scholar.valpo.edu/cgi/viewcontent.cgi?article=2426&context=vulr.

"depict[s] the defendant as part of the initial making or publishing of a statement."[140] The common law also recognized a "narrow exception to the rule that there must be an affirmative act of publishing a statement."[141] A person "while not actually publishing—will be subjected to liability for the reputational injury that is attributable to the defendant's failure to remove a defamatory statement published by another person."[142] Such a duty might apply where a defendant has undertaken an affirmative duty to remove. Stratton Oakmont embodies the latter idea: The court held that Prodigy, having undertaken to moderate some content on its page, thereby assumed an affirmative duty to moderate all content on its site. At common law, then, the publication element of defamation could be satisfied either through the rule—an affirmative act—or the exception—an omission where an affirmative duty applies.

Section 230(c)(1)'s "treated as the publisher or speaker" could plausibly be understood to foreclose liability only if a defendant would satisfy the exception. Satisfying the exception subjects one to defamation liability as if he were the publisher or speaker of the content, although he did not "actually publish[]" the content.[143] He is not a "true publisher" in the sense of satisfying the affirmative act requirement, but he is deemed or regarded as if he were because he had an affirmative duty to moderate.[144] This interpretation of section 230(c)(1) reads it to foreclose the very argument courts may have been on track to embrace after Stratton Oakmont, viz., that a platform has an affirmative duty to remove defamatory content and will be treated as satisfying the publication element of defamation for nonfeasance in the same way as a true publisher. Section 230(c)(1) states—in the face of Stratton Oakmont's contrary holding—a

[140] Id. at 19.
[141] Id. at 20.
[142] Id. at 21 (citing Restatement (Second) of Torts § 577(2) (Am. Law Inst. 1977)).
[143] Zipursky, 51 Val. L. Rev. at 21.
[144] Id. at 45.

general rule: There is no affirmative duty to remove. For that reason, section 230(c)(1) should be construed to concern only failures to remove and not takedowns, and not to apply when a platform "actually publishes" content.

NTIA suggests that the FCC can clarify the ambiguous phrase "speaker or publisher" by establishing that section 230(c)(1) does not immunize the conduct of an interactive service provider that is actually acting as a publisher or speaker in the traditional sense. Two points follow. First, when a platform moderates outside of section 230(c)(2)(A), section 230(c)(1) does not provide an additional, broader immunity that shields content takedowns more generally. Such affirmative acts are outside of the scope of (c)(1). Second, when a platform reviews third-party content already displayed on the internet and affirmatively vouches for it, editorializes, recommends, or promotes such content on the basis of the content's substance or message, the platform receives no section 230(c)(1) immunity. NTIA therefore requests that the FCC further add the below to newly requested Subpart E to 47 CFR Chapter I:

Subpart E. Clarifying Subsection 230(f)(2).

§ 130.04

(c) An interactive computer service is not being "treated as the publisher or speaker of any information provided by another information content provider" when it actually publishes its own or third-party content. Circumstances in which an interactive computer service actually publishes content include when:

(i) it affirmatively solicits or selects to display information or content either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool pursuant to a reasonably discernible viewpoint or message, without having been prompted to, asked to, or searched for by the user; and
(ii) it reviews third-party content already displayed on the Internet and affirmatively vouches for, editorializes, recommends, or promotes such content to other Internet users on the basis of the content's substance or messages. This paragraph applies to a review conducted, and a recommendation made, either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool.

(d) An interactive computer service does not publish content merely by:

(i) providing content in a form or manner that the user chooses, such as non-chronological order, explicit user preferences, or because a default setting of the service provides it, and the interactive computer service fully informs the user of this default and allows its disabling; or

(ii) transmitting, displaying, or otherwise distributing such content, or merely by virtue of moderating third-party content consistent with a good faith application of its terms of service in force at the time content is first posted. Such an interactive computer service may not, by virtue of such conduct, be "treated as a publisher or speaker" of that third-party content. 47 U.S.C. § 230(c)(1).

VI. Title I and Sections 163 and 257 of the Act Permit the FCC to Impose Disclosure Requirements on Information Services

With roots in the Modified Final Judgment for the break-up of AT&T[145] and codified by the Telecommunications Act of 1996,[146] the term "information service" refers to making information available via telecommunications. Under FCC and judicial precedent, social media sites are "information services." As such, courts have long recognized the Commission's power to require disclosure of these services under sections 163 and 257.

A. Social media are information services

Section 230(f)(2) explicitly classifies "interactive computer services" as "information services," as defined in 47 U.S.C. § 153(20).[147] Further, social media fits the FCC's definition of

[145] United States v. Am. Tel. & Tel. Co., 552 F. Supp. 131, 179 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) (observing that "'Information services' are defined in the proposed decree at Section IV(J) as: the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information which may be conveyed via telecommunications").

[146] 47 U.S.C. § 153(24).

[147] Id. ("[T]he offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.").

enhanced services.[148] In Brand X, the Supreme Court explained, "The definitions of the terms 'telecommunications service' and 'information service' established by the 1996 Act are similar to the Computer II basic-and enhanced-service classifications" with "'information service'—the analog to enhanced service."[149]

Numerous courts have ruled that search engines, browsers and internet social media precursors such as chat rooms are information services.[150] Courts have long recognized edge providers as information services under Title I. For example, in Barnes, the U.S. Court of Appeals for the Ninth Circuit classifies Yahoo's social networking services an "information service," interchangeably with "interactive computer service," and in Howard v. Am. Online, the same court designates America Online's messaging facilities "enhanced services."[151]

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[148] 47 CFR § 64.702 ("[S]ervices, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information.").

[149] Nat'l Cable & Telecommunications Ass'n v. Brand X Internet Servs., 545 U.S. 967, 977 (2005).

[150] Mozilla Corp. v. F.C.C., 940 F.3d 1, 34 (D.C. Cir. 2019) ("But quite apart from the fact that the role of ISP-provided browsers and search engines appears very modest compared to that of DNS and caching in ISPs' overall provision of Internet access, Petitioners are in a weak posture to deny that inclusion of 'search engines and web browsers' could support an 'information service' designation . . . since those appear to be examples of the 'walled garden' services that Petitioners hold up as models of 'information service'-eligible offerings in their gloss of Brand X.") (internal citations omitted); FTC v. Am. eVoice, Ltd., 242 F. Supp. 3d 1119 (D. Mont. 2017) (Email and online "chat rooms" "were enhanced services because they utilized transmission lines to function, as opposed to acting as a pipeline for the transfer of information . . . . 'This conclusion is reasonable because e-mail fits the definition of an enhanced service.'" (quoting Howard v. Am. Online Inc., 208 F.3d 741, 746 (9th Cir. 2000)). "Also excluded from coverage are all information services, such as Internet service providers or services such as Prodigy and America-On-Line." H.R. Rep. No. 103-827, at 18 (1994), as reprinted in 1994 U.S.C.C.A.N. 3489, 3498

[151] Barnes, 570 F.3d at 1101.

B. Several statutory sections empower the FCC to mandate disclosure

Beyond having jurisdiction over social media as information services, the FCC has clear statutory authority to impose disclosure requirements under sections 163 and 257 of the Communications Act. Section 163 charges the FCC to "consider all forms of competition, including the effect of intermodal competition, facilities-based competition, and competition from new and emergent communications services, including the provision of content and communications using the Internet" and "assess whether laws, regulations, regulatory practices . . . pose a barrier to competitive entry into the communications marketplace or to the competitive expansion of existing providers of communications services."[152] Section 257(a) of the Communications Act requires the FCC to examine market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services."[153]

In its 2018 Internet Order, the Commission relied on section 257 to impose service transparency requirements on providers of the information service of broadband internet access. It reasoned that doing so would reduce entry barriers.[154] Similar reasoning applies to requiring transparency for social media. Clear, current, readily accessible and understandable descriptions of an interactive computer service provider's content moderation policies would help enterprising content providers fashion their offerings so that they can be provided across multiple

[152] 47 U.S.C. § 163.
[153] 47 U.S.C. § 257(a) (2018). While section 257 was amended and repealed in part, its authority remained intact in section 163. "Congress emphasized that '[n]othing in this title [the amendment to the Telecommunications Act creating section 163] or the amendments made by this title shall be construed to expand or contract the authority of the Commission." Mozilla, 940 F.3d at 47 citing Pub. L. No. 115-141, Div. P, § 403, 132 Stat. at 1090.
[154] Federal Communications Commission, In the Matter of Restoring Internet Freedom, 33 F.C.C. Rcd. 311 (2018).

platforms with reduced costs and friction for the provider and fewer disruptions to user experiences.[155]

Perhaps more important, information about an interactive computer service provider's content moderation policies would help entities design filtering products that could improve the providers' implementation of those policies, or assist consumers in remedying the gaps they may see in the providers' policies. Certainly, empowering consumers with blocking technologies that they choose and control—rather than accepting a platform's top-down centralized decisions, would directly advance section 230's policy of encouraging "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."[156] Increasing transparency about online platforms' content moderation practices would also enable users to make more informed choices about competitive alternatives.

Consumers today have a one-way relationship with social media transparency; platforms know everything about consumers, but consumers know very little about how or why platforms exercise influence or direct control over consumers' speech. Certain information disappears or becomes difficult to find, while other information is promoted and prominently displayed. Inevitably, some consumers and content creators begin to worry that secretive forces within platform providers are manipulating social media for ends that can only be guessed at.[157] Such suspicion is inevitable when there is so little transparency about the process behind the social media visibility of user-provided content, even when policies are applied fairly and no

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[155] See supra Section IV.
[156] 47 U.S.C. § 230(a)(3).
[157] Rod Dreher, Google Blacklists Conservative Websites (July 21, 2020), https://www.theamericanconservative.com/dreher/google-blacklists-conservative-websites/.

wrongdoing has taken place. By increasing transparency to consumers, platforms would ensure that consumers can choose to consume social media whose policies they agree with without fear that manipulations to which they did not consent are happening behind the scenes.

The importance of disclosure to our communications networks cannot be underestimated. Chairman Pai recognizes that democracies must require transparency and to ensure the proper function of essential communications networks.[158] That is why, when eliminating Title II common carrier so-called "network neutrality" regulations, Chairman Pai's FCC retained Title I disclosure requirements for broadband access service providers.

The same is true for other information service providers. Speaking of the social media platforms, FCC Chairman Ajit Pai asked "how do these companies make decisions about what we see and what we don't? And who makes those decisions?"[159] For social media, it is particularly important to ensure that large firms avoid "deceptive or pretextual actions stifling free and open debate by censoring certain viewpoints,"[160] or engage in deceptive or pretextual actions (often contrary to their stated terms of service) to stifle viewpoints with which they disagree."[161]

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[158] Federal Communications Commission, In the Matter of Restoring Internet Freedom, WC Docket No. 17-108, Declaratory Ruling, Report And Order, And Order (Jan, 4, 2018) ¶ 209, available at https://www.fcc.gov/document/fcc-releases-restoring-internet-freedom-order ("'Sunlight,' Justice Brandeis famously noted, 'is . . . the best of disinfectants.' This is the case in our domain. Properly tailored transparency disclosures provide valuable information to the Commission to enable it to meet its statutory obligation to observe the communications marketplace to monitor the introduction of new services and technologies, and to identify and eliminate potential marketplace barriers for the provision of information services. Such disclosures also provide valuable information to other Internet ecosystem participants.").

[159] Ajit Pai, What I Hope to Learn from the Tech Giants (Sept. 4, 2018), https://www.fcc.gov/news-events/blog/2018/09/04/what-i-hope-learn-tech-giants (last visited June 15, 2020).

[160] E.O. 13925, Section 2(a).

[161] Id.

To prevent these ends, NTIA requests that the FCC further add the below to Subpart E to 47 CFR Chapter I Subchapter A Part 8:

§ 8.2 Transparency for Interactive Computer Services.

Any person providing an interactive computer service in a manner through a mass-market retail offering to the public shall publicly disclose accurate information regarding its content-management mechanisms as well as any other content moderation, promotion, and other curation practices of its interactive computer service sufficient to enable (i) consumers to make informed choices regarding the purchase and use of such service and (ii) entrepreneurs and other small businesses to develop, market, and maintain offerings by means of such service. Such disclosure shall be made via a publicly available, easily accessible website or through transmittal to the Commission.

VII. Conclusion

For the foregoing reasons, NTIA respectfully requests that the Commission institute a rulemaking to interpret Section 230 of the Communications Act.

Respectfully submitted,

Douglas Kinkoph

Douglas Kinkoph
Performing the Delegated Duties of the
Assistant Secretary for Commerce for
Communications and Information

July 27, 2020

APPENDIX A: Proposed Rules

47 CFR Chapter I, Subchapter E
Part 130 – Section 230 of the Communications Decency Act.

Interpreting Subsection 230(c)(1) and Its Interaction With Subsection 230(c)(2).
§ 130.01
As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

(a) 47 U.S.C. 230(c)(1) applies to an interactive computer service for claims arising from failure to remove information provided by another information content provider. Section 230(c)(1) has no application to any interactive computer service's decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service. Any applicable immunity for matters described in the immediately preceding sentence shall be provided solely by 47 U.S.C. § 230(c)(2).

(b) An interactive computer service is not a publisher or speaker of information provided by another information content provider solely on account of actions voluntarily taken in good faith to restrict access to or availability of specific material in accordance with subsection (c)(2)(A) or consistent with its terms of service or use.

(c) An interactive computer service is not being "treated as the publisher or speaker of any information provided by another information content provider" when it actually publishes its own or third-party content. Circumstances in which an interactive computer service actually publishes content include when:

(i) it affirmatively solicits or selects to display information or content either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool pursuant to a reasonably discernible viewpoint or message, without having been prompted to, asked to, or searched for by the user;

(ii) it reviews third-party content already displayed on the Internet and affirmatively vouches for, editorializes, recommends, or promotes such content to other Internet users on the basis of the content's substance. This paragraph applies to a review conducted, and a recommendation made, either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool.

(d) An interactive computer service does not publish content merely by:

(1) providing content in a form or manner that the user chooses, such as non-chronological order, explicit user preferences, or because a default

setting of the service provides it, and the interactive computer service fully informs the user of this default and allows its disabling; or
(2) transmitting, displaying, or otherwise distributing such content, or merely by virtue of moderating third-party content consistent with a good faith application of its terms of service in force at the time content is first posted. Such an interactive computer service may not, by virtue of such conduct, be "treated as a publisher or speaker" of that third-party content. 47 U.S.C. § 230(c)(1).

Clarifying Subsection 230(c)(2).
§ 130.02
As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

(a) "obscene," "lewd," lascivious" and "filthy"
The terms "obscene," "lewd," "lascivious," and "filthy" mean material that

iv. taken as a whole, appeals to the prurient interest in sex or portrays sexual conduct in a patently offensive way, and which, taken as a whole, does not have serious literary, artistic, political, or scientific value;
v. depicts or describes sexual or excretory organs or activities in terms patently offensive as measured by contemporary community standards; to the average person, applying contemporary community standards; or
vi. signifies the form of immorality which has relation to sexual impurity, and have the same meaning as is given them at common law in prosecutions for obscene libel.

(b) "excessively violent"
The term "excessively violent" means material that

iii. is likely to be deemed violent and for mature audiences according the Federal Communications Commission's V-chip regulatory regime and TV Parental Guidance, promulgated pursuant to Section 551 of the 1996 Telecommunications Act Pub. L. No. 104-104, § 551, 110 Stat. 139-42 (codified at 47 U.S.C. § 303; § 330(c)(4));
iv. constitutes or intends to advocate domestic terrorism or international terrorism, each as defined in 18 U.S.C. § 2331 ("terrorism").

(c) "harassing"
The term "harassing" means any material that

iv. that sent by an information content provider that has the subjective intent to abuse, threaten, or harass any specific person and is lacking in any serious literary, artistic, political, or scientific value;
v. regulated by the CAN-SPAM Act of 2003, 117 Stat. 2699; or
vi. that is malicious computer code intended (whether or not by the immediate disseminator) to damage or interfere with the operation of a computer.

(d) "otherwise objectionable"
The term "otherwise objectionable" means any material that is similar in type to obscene, lewd, lascivious, filthy, excessively violent, or harassing materials.

(e) "good faith"

A platform restricts access to or availability of specific material (including, without limitation, its scope or reach) by itself, any agent, or any unrelated party in "good faith" under 47 U.S.C. § (c)(2)(A) if it:

v. restricts access to or availability of material or bars or refuses service to any person consistent with publicly available terms of service or use that state plainly and with particularity the criteria the interactive computer service employs in its content-moderation practices, including by any partially or fully automated processes, and that are in effect on the date such content is first posted;

vi. has an objectively reasonable belief that the material falls within one of the listed categories set forth in 47 U.S.C. § 230(c)(2)(A);

vii. does not restrict access to or availability of material on deceptive or pretextual grounds, and does not apply its terms of service or use to restrict access to or availability of material that is similarly situated to material that the interactive computer service intentionally declines to restrict; and

viii. supplies the interactive computer service of the material with timely notice describing with particularity the interactive computer service's reasonable factual basis for the restriction of access and a meaningful opportunity to respond, unless the interactive computer service has an objectively reasonable belief that the content is related to criminal activity or such notice would risk imminent physical harm to others.

Clarifying Subsection 230(f)(2).

§ 130.03

As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

For purposes of 47 U.S.C. § 230(f)(3), "responsible, in whole or in part, for the creation or development of information" includes substantively contributing to, modifying, altering, presenting with a reasonably discernible viewpoint, commenting upon, or editorializing about content provided by another information content provider.

47 CFR Chapter I Subchapter A Part 8 ---Internet Freedom.

§ 8.2 Transparency for Interactive Computer Services.

Any person providing an interactive computer service in a manner through a mass-market retail offering to the public shall publicly disclose accurate information regarding its content-management mechanisms as well as any other content moderation, promotion, and other curation practices of its interactive computer service sufficient to enable (i) consumers to make informed choices regarding the purchase and use of such service and (ii) entrepreneurs and other small businesses to develop, market, and maintain offerings by means of such service. Such disclosure shall be made via a publicly available, easily accessible website or through transmittal to the Commission.

From:	Smith, Kathy
To:	Kinkoph, Douglas; Candeub, Adam; Simington, Nathan
Cc:	Yusko, Stephen F.
Subject:	RE: NTIA Petition for Rulemaking re: Social Media Executive Order
Date:	Monday, July 27, 2020 4:11:08 PM
Attachments:	NTIA Social Media Petition for Rulemaking 7.27.20.pdf

I have scrubbed it one more time for metadata and this is the document I will file at 5 p.m.

From: Kinkoph, Douglas <DKinkoph@ntia.gov>
Sent: Monday, July 27, 2020 4:08 PM
To: Smith, Kathy <KSmith@ntia.gov>; Candeub, Adam <acandeub@ntia.gov>; Simington, Nathan <nsimington@ntia.gov>
Cc: Yusko, Stephen F. <SYusko@ntia.gov>
Subject: RE: NTIA Petition for Rulemaking re: Social Media Executive Order

Signed copy attached.

Doug

From: Smith, Kathy <KSmith@ntia.gov>
Sent: Monday, July 27, 2020 3:58 PM
To: Kinkoph, Douglas <DKinkoph@ntia.gov>; Candeub, Adam <acandeub@ntia.gov>; Simington, Nathan <nsimington@ntia.gov>
Cc: Yusko, Stephen F. <SYusko@ntia.gov>
Subject: NTIA Petition for Rulemaking re: Social Media Executive Order

Attached please find a Word file containing the final of the Petition for Rulemaking that incorporates the last few minor footnote edits (Adam and Nathan) and Doug's signature block and deletes the Table of Authorities. Please note the Word file still contains the metadata so I would recommend not sharing it outside of Commerce even under an embargo

I have also attached a pdf file for signature. It has been stripped of all metadata.

Please sign it (when you regain access to Citrix) and send it back to me. I will file it through ECFS at 5 p.m. today and send you all the confirmation page.

Kathy Smith
Chief Counsel
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
HCHB 4713
Washington, DC 20230
Phone: 202-482-1816
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Section 230 of the	)	File No. RM-_____
Communications Act of 1934	)	

To: The Commission

PETITION FOR RULEMAKING OF THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

National Telecommunications and
Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230
(202) 482-1816

July 27, 2020

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Section 230 of the	)	File No. RM-_____
Communications Act of 1934	)	

To: The Commission

PETITION FOR RULEMAKING OF THE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

Pursuant to section 1.401 of the Code of Federal Regulations,[1] in accordance with Executive Order 13925 (E.O. 13925),[2] and through the National Telecommunications and Information Administration (NTIA), the Secretary of Commerce (Secretary) respectfully requests that the Federal Communications Commission (FCC or Commission) initiate a rulemaking to clarify the provisions of section 230 of the Communications Act of 1934, as amended.[3] NTIA, as the President's principal adviser on domestic and international telecommunications and information policy, is charged with developing and advocating policies concerning the regulation of the telecommunications industry and "ensur[ing] that the views of the executive branch on telecommunications matters are effectively presented to the Commission . . . ."[4] Specifically, per E.O. 13925, NTIA requests that the Commission propose rules to clarify:

[1] 47 CFR § 1.401(a).
[2] Exec. Order No. 13925: Preventing Online Censorship, 85 Fed. Reg. 34,079 (June 2, 2020) (E.O. 13925).
[3] 47 U.S.C. § 230.
[4] 47 U.S.C. § 902(b)(2)(J); see also 47 U.S.C. §§ 901(c)(3), 902(b)(2)(I) (setting forth related duties).

(i) the interaction between subparagraphs (c)(1) and (c)(2) of section 230, in particular to clarify and determine the circumstances under which a provider of an interactive computer service that restricts access to content in a manner not specifically protected by subparagraph (c)(2)(a) may also not be able to claim protection under subparagraph (c)(1);[5]

(ii) the conditions under which an action restricting access to or availability of material is not "taken in good faith" within the meaning of subparagraph (c)(2)(A) of section 230, particularly whether actions can be "taken in good faith" if they are

(A) deceptive, pretextual, or inconsistent with a provider's terms of service; or

(B) taken after failing to provide adequate notice, reasoned explanation, or a meaningful opportunity to be heard;[6] and

(iii) any another proposed regulation that NTIA concludes may be appropriate to advance the policy described in subsection (a) of E.O. 13925, to impose disclosure requirements similar those imposed on other internet companies, such as major broadband service providers, to promote free and open debate on the internet.[7]

[5] See infra sections V.E.1, V.E.3 and section V.E.4.
[6] See infra section V.E.2.
[7] See infra section VI.

I. Statement of Interest

Since its inception in 1978, NTIA has consistently supported pro-competitive, pro-consumer telecommunications and internet policies. NTIA files this petition pursuant to E.O. 13925 to ensure that section 230 of the Communications Act of 1934, as amended, continues to further these goals. The President, through E.O. 13925, has directed the Secretary to file this petition for rulemaking through NTIA.[8]

II. Summary of Argument

Freedom of expression defends all our other freedoms. Only in a society that protects free expression can citizens criticize their leaders without fear, check their excesses, and expose their abuses. As Ben Franklin stated, "[w]hoever would overthrow the Liberty of a Nation, must begin by subduing the Freeness of Speech."[9] However, social media and its growing dominance present troubling questions on how to preserve First Amendment ideals and promote diversity of voices in modern communications technology. Social media's power stems in part from the legal immunities granted by the Communications Decency Act of 1996.[10] Congress passed the statute in the beginning of the internet age with the goal of creating a safe internet for children. It did so by protecting children from pornography and providing incentives for platforms to

[8] E.O. 13925, Section 2(b).
[9] Benjamin Franklin, Silence Dogood No. 8, The New-England Courant, July 9, 1722.
[10] Communications Decency Act of 1996 (CDA), Pub. L. No. 104-104, 110 Stat. 133, Title V—Obscenity and Violence, § 509 "Online family empowerment," codified at 47 U.S.C. 230, "Protection for private blocking and screening of offensive material." The CDA was incorporated as Title V to the Telecommunications Act of 1996, which in turn, was incorporated in the Communications Act of 1934. While these laws are all now part of the same statute, they do have separate histories and will be referred to individually when necessary.

remove harmful content. While the Supreme Court struck down the provisions limiting pornography, section 230 remained.[11]

Section 230 is the legislative response to a New York state case, Stratton Oakmont, Inc. v. Prodigy Servs. Co.[12] In this case, the court extended tort liability to internet bulletin boards and ruled that defendant Prodigy Services Company would be liable for the entire content of their platform if they engaged in editing and moderation to remove distasteful content.[13] Congress intended section 230 to offer platforms immunity from liability under certain circumstances, namely to encourage platforms to moderate specific types of material, mostly that are sexual or inappropriate to minors. It is vital to remember, however, that Congress in section 230 also had the express purpose of ensuring that the "Internet and other [internet platforms] offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity."[14]

Times have changed, and the liability rules appropriate in 1996 may no longer further Congress's purpose that section 230 further a "true diversity of political discourse." A handful of large social media platforms delivering varied types of content over high-speed internet have replaced the sprawling world of dial-up Internet Service Providers (ISPs) and countless bulletin boards hosting static postings. Further, with artificial intelligence and automated methods of textual analysis to flag harmful content now available, unlike at the time of Stratton Oakmont, Inc., platforms no longer need to manually review each individual post but can review, at much

[11] Reno v. American Civil Liberties Union, 521 U.S. 844 (1997).
[12] 1995 WL 323710 (N.Y. Sup. Ct., May 24, 1995) (unpublished). See also, Force v. Facebook, Inc., 934 F.3d 53, 63-64 (2d Cir. 2019) ("To overrule Stratton . . . .").
[13] Stratton Oakmont, 1995 WL 323710, at *3.
[14] 47 U.S.C. § 230(a)(3).

lower cost, millions of posts.[15] Thus, the fundamental assumptions driving early section 230 interpretation are antiquated and lack force, thus necessitating a recalibration of section 230 protections to accommodate modern platforms and technologies.

The FCC should use its authorities to clarify ambiguities in section 230 so as to make its interpretation appropriate to the current internet marketplace and provide clearer guidance to courts, platforms, and users. NTIA urges the FCC to promulgate rules addressing the following points:

1. Clarify the relationship between subsections (c)(1) and (c)(2), lest they be read and applied in a manner that renders (c)(2) superfluous as some courts appear to be doing.

2. Specify that Section 230(c)(1) has no application to any interactive computer service's decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service.

3. Provide clearer guidance to courts, platforms, and users, on what content falls within (c)(2) immunity, particularly section 230(c)(2)'s "otherwise objectionable" language and its requirement that all removals be done in "good faith."

4. Specify that "responsible, in whole or in part, for the creation or development of information" in the definition of "information content provider," 47 U.S.C. § 230(f)(3), includes editorial decisions that modify or alter content, including but not limited to substantively contributing to, commenting upon, editorializing about, or presenting with a discernible viewpoint content provided by another information content provider.

[15] Adrian Shahbaz & Allie Funk, "Freedom on the Net 2019 Key Finding: Governments harness big data for social media surveillance," Freedom House, Social Media Surveillance, https://freedomhouse.org/report/freedom-on-the-net/2019/the-crisis-of-social-media/social-media-surveillance ("Social media surveillance refers to the collection and processing of personal data pulled from digital communication platforms, often through automated technology that allows for real-time aggregation, organization, and analysis of large amounts of metadata and content . . . . Advances in artificial intelligence (AI) have opened up new possibilities for automated mass surveillance.").

5. Mandate disclosure for internet transparency similar to that required of other internet companies, such as broadband service providers.

III. The Commission Should Act to Protect Free Speech Online

New regulations guiding the interpretation of section 230 are necessary to facilitate the provisions' interpretation in a way that best captures one of the nation's most important Constitutional freedoms. "Free speech is the bedrock of American democracy . . . . The freedom to express and debate ideas is the foundation for all of our rights as a free people."[16] Our democracy has long recognized that control of public discourse in the hands of too few stifles freedom of expression and risks undermining our political institutions. For centuries, Americans have taken action to maintain the free flow of information and ideas to ensure the fullest and most robust marketplace of ideas—from the Postal Service Act of 1792, one of Congress's first acts which established preferential rates for newspapers,[17] to nondiscrimination requirements for telegraphs and telephones,[18] to antitrust actions to ensure the free flow of news stories,[19] and to efforts to limit undue dominance in broadcast and cable media to guarantee the flow of information to television viewers.[20]

Yet today, free speech faces new threats. Many Americans follow the news, stay in touch with friends and family, and share their views on current events through social media and other

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[16] E.O. 13925, Section 1.
[17] Richard B. Kielbowicz, News in the Mail: The Press, Post Office and Public Information, 1700-1860s, at 33-34 (1989).
[18] Thomas B. Nachbar, The Public Network, 17 CommLaw Conspectus 67, 77 (2008). ("Nondiscriminatory access is . . . the order of the day for . . . telecommunications, and even cable television.").
[19] Associated Press v. United States, 326 U.S. 1 (1945).
[20] Turner Broad. Sys, Inc. v. F.C.C., 512 U.S. 622 (1994); F.C.C. v. National Citizens Comm. for Broad., 436 U.S. 775 (1978); Nat'l Broad. Co. v. United States, 319 U.S. 190 (1943); Time Warner Ent. Co. L.P. v. F.C.C., 240 F.3d 1126 (D.C. Cir. 2001).

online platforms. These platforms function, as the Supreme Court recognized, as a 21st century equivalent of the public square.[21] Provision and control of the public square is a public trust. Because it entails selecting which speech gets heard and by whom, social media can assimilate a collective conversation into a corporate voice with a corporate point of view. As the E.O. explains, "[w]hen large, powerful social media companies censor opinions with which they disagree, they exercise a dangerous power. They cease functioning as passive bulletin boards, and ought to be viewed and treated as content creators."[22] The Commission itself has previously recognized the importance of enabling "the widest possible dissemination of information from diverse and antagonistic sources" and "assuring that the public has access to a multiplicity of information sources" as internet regulations' essential goal.[23]

Unfortunately, large online platforms appear to engage in selective censorship that is harming our national discourse. The E.O. notes that "[t]ens of thousands of Americans have reported online platforms "flagging" content as inappropriate, even though it does not violate any stated terms of service" and is not unlawful. The platforms "mak[e] unannounced and unexplained changes to company policies that have the effect of disfavoring certain viewpoints and delet[e] content and entire accounts with no warning, no rationale, and no recourse."[24] FCC

[21] Packingham v. North Carolina, 137 S. Ct. 1730, 1732 (2017) ("Social media . . . are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge.").
[22] E.O. 13925, Section 1.
[23] Federal Communications Commission, In the Matter of Protecting and Promoting the Open Internet, GN Docket No. 14-28, FCC 15-24, Report and Order on Remand, Declaratory Ruling, and Order, 2015 WL 1120110, *268 (¶ 545) (quoting Turner, 512 U.S. at 663).
[24] E.O. 13925, Section 1; Divino Group LLC, et al. v. Google LLC, et al., 5:19-cv-4749-VKD, Dkt #20 (2d Am. Compl.) at ¶¶ 119-123, 128-247 (N.D. Cal. (San Jose Division), dated Aug. 13, 2019) (class action complaint alleging YouTube censorship of LGBT+ content).

Commissioner Brendan Carr has remarked, "there's no question that [large social media platforms] are engaging in editorial conduct, that these are not neutral platforms."[25] Others have expressed shock that while large social media platforms will censor or fact-check constitutionally elected democratic leaders, many social media companies welcome and facilitate censorship by the Chinese Communist Party, thereby spreading disinformation and communist propaganda related to China's mass imprisonment of religious minorities, the origins of the COVID-19 pandemic, and the pro-democracy protests in Hong Kong.[26] Unfortunately, few academic empirical studies exist of the phenomenon of social media bias.

Much of social media's overarching influence and power stems from the immunities it enjoys under expansive interpretations of section 230 of the Communications Decency Act,[27] a provision Congress passed in 1996 at the beginning of the internet era. Many early cases, understandably protective of a nascent industry, read section 230's protections expansively. But, given the maturing internet economy and emergence of dominant social media platforms, the FCC should re-examine section 230, as well as other provisions of the Communications Act of 1934. The FCC should determine how section 230 can best serve its goals of promoting internet

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[25] Jan Jekielek, On Social Media Bias, Trump's Executive Order, and the China Data Threat: FCC Commissioner Brendan Carr, The Epoch Times, June 1, 2020, https://www.theepochtimes.com/on-social-media-bias-trumps-executive-order-and-the-china-data-threat-fcc-commissioner-brendan-carr_3372161.html.

[26] See, e.g., Sigal Samuel, China paid Facebook and Twitter to help spread anti-Muslim propaganda, Vox, Aug. 22, 2019, https://www.vox.com/future-perfect/2019/8/22/20826971/facebook-twitter-china-misinformation-ughiur-muslim-internment-camps; Ryan Gallagher, China's Disinformation Effort Targets Virus, Researcher Says, Bloomberg News, May 12, 2020, https://www.bloomberg.com/news/articles/2020-05-12/china-s-disinformation-campaign-targets-virus-and-businessman; James Titcomb & Laurence Dodds, Chinese state media use Facebook adverts to champion Hong Kong crackdown, June 8, 2020, https://www.telegraph.co.uk/technology/2020/06/08/chinese-state-media-use-facebook-adverts-champion-hong-kong/.

[27] 47 U.S.C. § 230.

diversity and a free flow of ideas, as well as holding dominant platforms accountable for their editorial decisions, in new market conditions and technologies that have emerged since the 1990s.[28]

IV. Relevant Facts and Data: Technological and Market Changes

Contemporary social media platforms have vastly different offerings, business models, relationships to users and customers, and, indeed, roles in national life than the early online bulletin boards that Prodigy and AOL offered in 1996. The FCC should recognize that the liability protections appropriate to internet firms in 1996 are different because modern firms have much greater economic power, play a bigger, if not dominant, role in American political and social discourse, and, with machine learning and other artificial techniques, have and exercise much greater power to control and monitor content and users.

CompuServe, Prodigy, America Online, and their competitors had fundamentally different business models from modern social media companies.[29] They had proprietary server banks, and their business model was to charge consumers for access, with significant surcharges

[28] See, e.g., Cubby, Inc. v. CompuServe Inc., 776 F.Supp. 135 (S.D.N.Y. 1991) (addressing CompuServe's 1990 service providing various online subscriber forums for certain groups).
[29] Andrew Pollack, Ruling May Not Aid Videotex, N.Y. Times, Sept. 15, 1987, at D1, https://www.nytimes.com/1987/09/15/business/ruling-may-not-aid-videotex.html (last visited July 27, 2020) ("The Videotex Industry Association estimates that there are 40 consumer-oriented services, such as CompuServe and the Source, in the United States, with a total membership of 750,000.").

for use of social features.[30] They were not interoperable,[31] There was thus no online "general public" population about whom information could be known, nor were there business partners to whom information on members of the public could be aggregated and sold. Online services faced a competitive landscape.

Online services competed with one another by commissioning or developing their own games, chat systems, financial-markets reporting, news services, and in-network mail services.[32] As users paid to connect, and thus directly funded online services, most online services did not contain advertising. The online service business model was not significantly reliant on third-party content because access to proprietary content was at the heart of online services' marketing

[30] Id. ("It is unclear, for instance, to what extent the gateway will be able to tell consumers where to go for the information they desire . . . . Each information service has its own commands for information retrieval."); Michael J. Himowitz, A look at on-line services CompuServe and Prodigy, The Baltimore Sun, Jan. 17, 1994 ("CompuServe [costs] $8.95 per month . . . . Effective Feb. 6, rates for forums and extended services . . . are an additional $4.80 per hour at 1200 or 2400 Baud, $9.60 per hour at 9600 or 14,400 Baud . . . . Prodigy: Most popular plan charges $14.95 per month . . . Additional Plus hours [for use of bulletin boards and stock market prices] are $3.60 each.").

[31] Pollack, supra note 29 ("Each information service has its own commands for information retrieval. With a useful gateway [which did not yet exist], the user would need to know only one set of commands and the gateway would translate them."); David Bernstein, Interoperability: The Key to Cloud Applications, https://e.huawei.com/en/publications/global/ict_insights/hw_376150/feature%20story/HW_376286 (last visited July 19, 2020) ("[T]he original online services such as AOL, Prodigy, and CompuServe had no interoperability between them. Content posted on one service could not be consumed by a client connected to a different service. Email could not be sent from a user on one service to a user on another.").

[32] Joanna Pearlstein, MacWorld's Guide to Online Services, MacWorld, Aug. 1994, at 90 ("Core services include general, business, and sports news; computer forums and news; reference materials; electronic mail and bulletin boards; business statistics and data; games; shopping services; travel services; and educational reference material. Still, the different online services do have different emphases, so even though they all offer a range of basic services, they are not interchangeable.").

efforts.[33] The online services of the late 1990s ran online bulletin boards as a minor sideline and used volunteer moderators from the computer hobbyist community.[34] Their business model was based on fees for connection time and professional database access, not community content.

One result of this model was that monitoring users and their content was a burden and regulatory imposition. Zeran, a leading and widely cited case on moderation, reflects this understanding of the technology of that time.[35] The Zeran court took the view, which most section 230 cases accept, that "liability [for third-party posts] upon notice [by an offended

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[33] James Coats, Getting on-line with cyberspace heavyweights, Chicago Tribune, Feb. 28, 1993 at C8 ("GEnie's greatest value to me is that it serves as a gateway to the ultraexpensive Dow Jones News/Retrieval service. Typing DOWJONES on GEnie gets me access to hundreds of thousands of newspaper articles - but at a cost well above $2 a minute. Still, when I'm involved in personal research, it empowers me with access to more than 100 different newspapers, wire services and magazines . . . . A costly service [on CompuServe] called IQUEST, for example, gets you access to thousands of newspapers, magazines, books and other research materials. A magazine database lets you search hundreds of thousands of back issues of publications from Playboy to Foreign Policy. The catch is that each article you decide to read in full costs $1.50 . . . . Tremendous amounts of information about stocks and investing can be had as well, for a price. You can follow favorite stocks by BasicQuotes and seek out news by company. Much of the famous Standard and Poor's research data can be had on CompuServe's S&P Online. Most company filings with the Securities and Exchange Commission can be downloaded on a service called Disclosure. I make heavy use of CompuServe's Executive News Service, which gives me an electronic 'clipping service' providing each day's news about dozens of firms I follow for my job, as well as other topics . . . . But Delphi takes the Internet much further than the other boards, which confine Internet traffic to electronic mail. With Delphi you can actually hook your home computer up with mainframes and minicomputers all around the world and read and download an almost unimaginably diverse wealth of files.").

[34] Catherine Buni & Soraya Chemaly, The Secret Rules of the Internet: the murky history of moderation, and how it's shaping the future of free speech, The Verge (April 13, 2016), https://www.theverge.com/2016/4/13/11387934/internet-moderator-history-youtube-facebook-reddit-censorship-free-speech (last visited July 19, 2020) ("Moderation's initially haphazard, laissez-faire culture has its roots here. Before companies understood how a lack of moderation could impede growth and degrade brands and community, moderators were volunteers; unpaid and virtually invisible. At AOL, moderation was managed by a Community Leader program composed of users who had previously moderated chat rooms and reported 'offensive' content. They were tasked with building 'communities' in exchange for having their subscription fees waived. By 2000, companies had begun to take a more proactive approach.").

[35] Zeran v. Am. Online, Inc., 129 F.3d 327 (4th Cir. 1997).

viewer] reinforces service providers' incentives to restrict speech and abstain from self-regulation."[36] The court went on to explain that online services cannot possibly take responsibility for third-party content due to its volume; as such, online services will simply prohibit all such content unless they are protected from liability for it. In the court's words:

> "If computer service providers were subject to distributor liability, they would face potential liability each time they receive notice of a potentially defamatory statement—from any party, concerning any message. Each notification would require a careful yet rapid investigation of the circumstances surrounding the posted information, a legal judgment concerning the information's defamatory character, and an on-the-spot editorial decision whether to risk liability by allowing the continued publication of that information. Although this might be feasible for the traditional print publisher, the sheer number of postings on interactive computer services would create an impossible burden in the Internet context."[37]

However, today's social media companies have adopted a different business model. Rather than provide database access, like Prodigy did, social media offers primarily third-party content.[38] Rather than charge fees, social media platforms profile users in order to categorize

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[36] Id. at 333.
[37] Id.
[38] Facebook Investor Relations, https://investor.fb.com/resources/default.aspx (last visited July 19, 2020) ("Founded in 2004, Facebook's mission is to give people the power to build community and bring the world closer together. People use Facebook to stay connected with friends and family, to discover what's going on in the world, and to share and express what matters to them."); Twitter Investor Relations, https://investor.twitterinc.com/contact/faq/default.aspx (last visited July 19, 2020) ("What is Twitter's mission statement? The mission we serve as Twitter, Inc. is to give everyone the power to create and share ideas and information instantly without barriers. Our business and revenue will always follow that mission in ways that improve – and do not detract from – a free and global conversation."); Google, Our Approach to Search, https://www.google.com/search/howsearchworks/mission/ (last visited July 19, 2020) ("Our company mission is to organize the world's information and make it universally accessible and useful."); YouTube Mission Statement, https://www.youtube.com/about/ (last visited July 19, 2020) ("Our mission is to give everyone a voice and show them the world. We believe that everyone deserves to have a voice, and that the world is a better place when we listen, share and build community through our stories."); Matt Buchanan, Instagram and the Impulse to Capture Every Moment, The New Yorker, June 20, 2013, https://www.newyorker.com/tech/annals-of-technology/instagram-and-the-impulse-to-capture-every-moment (last visited July 27, 2020)

them and connect them to advertisers and other parties interested in user information.[39] Online platforms like Twitter, Facebook, and YouTube have content moderation at the heart of their business models. Unlike the early internet platforms, they have invested immense resources into both professional manual moderation and automated content screening for promotion, demotion, monetization, and removal.[40]

("When I think about what Instagram is, I think about moments," said Kevin Systrom, the photo-sharing service's co-founder and C.E.O. "Our mission is to capture and share the world's moments.").

[39] Len Sherman, Why Facebook Will Never Change Its Business Model, Forbes.com, Apr, 16, 2018, https://www.forbes.com/sites/lensherman/2018/04/16/why-facebook-will-never-change-its-business-model/#7cdac11c64a7 (last visited July 27, 2020) ("By now, it's widely understood that Facebook's voracious appetite for user data is driven by their business model which charges advertisers for access to precisely targeted segments of their massive consumer database. No one knows more about more consumers than Facebook"); Twitter and Facebook have differing business models, The Economist, June 6, 2020, https://www.economist.com/business/2020/06/04/twitter-and-facebook-have-differing-business-models (last visited July 27, 2020) ("At first blush, Twitter and Facebook look similar. Each is a social network, connecting users online and presenting them with content in a 'feed', a never-ending list of posts, pictures and videos of pets. Each makes money by selling advertising, and thus has an interest in using every trick to attract users' attention. And each employs gobbets of data gleaned from users' behaviour to allow advertisers to hit targets precisely, for which they pay handsomely"); Enrique Dans, Google Vs. Facebook: Similar Business Models, But With Some Very Big Differences, Forbes.com, Feb. 2, 2019, https://www.forbes.com/sites/enriquedans/2019/02/02/google-vs-facebook-similar-business-models-but-with-some-very-big-differences/#6ab9408541ef (last visited July 27, 2020) ("Google does not sell my data or pass it on to any third party, it simply allows that third party to display an advertisement to a segment of its database that includes me, based on certain variables . . . . What is the result of Google knowing about us and our online interests? We receive ads that largely reflect those interests and we still have some control over what we see.").

[40] Zoe Thomas, Facebook content moderators paid to work from home, BBC.com, Mar. 18, 2020, https://www.bbc.com/news/technology-51954968 (last visited July 27, 2020) ("Facebook has approximately 15,000 content moderators in the US, who are hired by third-party contracting companies"); Elizabeth Dwoskin, et al., Content moderators at YouTube, Facebook and Twitter see the worst of the web — and suffer silently, Washington Post, July 25, 2019, https://www.washingtonpost.com/technology/2019/07/25/social-media-companies-are-outsourcing-their-dirty-work-philippines-generation-workers-is-paying-price/ (last visited July 27, 2020) ("In the last couple of years, social media companies have created tens of thousands of jobs around the world to vet and delete violent or offensive content . . . ."); Shannon Bond, Facebook, YouTube Warn Of More Mistakes As Machines Replace Moderators, National Public

Understanding how new entrants can or cannot participate in these intermediary markets is therefore key in understanding appropriate liability regimes; this is particularly important because liability shields can deter entrance. Market observers have significant concerns about barriers to entrance for new social media companies as well as social media's role with other edge providers in creating mediation markets. It is no secret that today's online platforms exist in highly concentrated markets.[41] Moreover, the relationship between social media and their adjacent markets is unclear, with mergers and other agreements having the potential for unexpected anticompetitive results.[42] Social media firms also demonstrate network effects and other barriers to entry, which frequently lead to weaker competition.[43] This lack of competition is particularly troubling given the decrease of new entrants documented in the broader economy.[44]

Section 230 was designed to assist the nascent internet industry. Pivotal judicial decisions, such as Zeran, interpreted ambiguous language in section 230 broadly, but at a time when different cost structures, business models, and markets prevailed. Given the rapidly

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Radio, March 31, 2020, https://www.npr.org/2020/03/31/820174744/facebook-youtube-warn-of-more-mistakes-as-machines-replace-moderators (last visited July 27, 2020) ("Facebook, YouTube and Twitter are relying more heavily on automated systems to flag content that violate their rules . . . . Tech companies have been saying for years that they want computers to take on more of the work of keeping misinformation, violence and other objectionable content off their platforms. Now the coronavirus outbreak is accelerating their use of algorithms rather than human reviewers.").

[41] Justin Haucap & Ulrich Heimeshoff, Google, Facebook, Amazon, eBay: Is the Internet driving competition or market monopolization? 11 Int. Econ. Policy 49–61 (2014).

[42] Carl Shapiro, Protecting Competition in the American Economy: Merger Control, Tech Titans, Labor Markets. 33(3) Journal of Economic Perspectives 69 (2019), available at http://faculty.haas.berkeley.edu/shapiro/protectingcompetition.pdf.

[43] Steven Berry, Martin Gaynor & Fiona Scott Morton, Do Increasing Markups Matter? Lessons from Empirical Industrial Organization, 33(3) Journal of Economic Perspectives 44 (2019).

[44] Germán Gutiérrez & Thomas Philippon, The Failure of Free Entry. NBER Working Paper No. 26001 (June 2019), available at https://www.nber.org/papers/w26001.pdf.

changing markets and relationship between market structure and optimal liability rules, NTIA urges the FCC to re-examine section 230 and work towards transparency in these markets.

V. The Authority and Need for Issuing Regulations for Section 230

This section sets forth the FCC's authority to issue regulations to interpret section 230 and shows how regulations are necessary to resolve the statute's ambiguities that the E.O. identified. This section further explains how the FCC has jurisdiction to issue regulations, outlines the background and history of section 230, explains its structure, and shows how courts have relied upon its ambiguities to make overly expansive interpretations.

Finally, it examines how the section's ambiguities should be resolved. Specifically, NTIA respectfully requests the FCC to:

- clarify the relationship between 230(c)(1) and (c)(2);
- explain the meaning of "good faith" and "otherwise objectionable" in section 230(c)(2);
- specify how the limitation on the meaning of "interactive computer service" found in section 230(f)(2) should be read into section 230(c)(1); and,
- explicate the meaning of "treated as a speaker or publisher" in section 230(c)(1).

A. The Commission's Power to Interpret Section 230 of the Communications Decency Act

Section 201(b) of the Communications Act (Act) empowers the Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out this chapter."[45] Under this authority, the FCC should promulgate rules to resolve ambiguities in Section 230. The Supreme Court has confirmed that "the grant in section 201(b) means what it

[45] 47 U.S.C. § 201(b).

says: The FCC has rulemaking authority to carry out the 'provisions of this Act.'" Section 230, in turn, was incorporated into the Act – in the same portion of the Act, Title II, as section 201(b) – by the Telecommunications Act of 1996 (1996 Act). The fact that section 230 was enacted after section 201(b) is of no consequence; the Supreme Court repeatedly has held that the Commission's section 201(b) rulemaking power extends to all subsequently enacted provisions of the Act, specifically identifying those added by the Telecommunications Act of 1996.[46] Thus, the Commission has authority under section 201(b) to initiate a rulemaking to implement section 230. That broad rulemaking authority includes the power to clarify the language of that provision, as requested in the petition.

The Commission has authority to implement section 230 through regulation even if this section was added to the 1934 Act through the amendments in the Telecommunications Act of 1996. It does not matter if the provision specifically mentions or contemplates FCC regulation. For instance, section 332(c)(7), which was also added to the Act by the 1996 Act, limits State and local decision-making on the placement, construction, or modification of certain wireless service facilities. The section makes no mention of FCC authority, only alluding to the Commission in passing and giving it no role in the provision's implementation. The Supreme Court nonetheless, upheld Commission's authority to issue regulations pursuant to section

[46] AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366, 378 (1999) ("We think that the grant in § 201(b) means what it says: The FCC has rulemaking authority to carry out the "provisions of this Act," which include §§ 251 and 252, added by the Telecommunications Act of 1996"); City of Arlington v. FCC, 668 F.3d 229, 250 (5th Cir. 2012), aff'd, 569 U.S. 290 (2013) ("Section 201(b) of that Act empowers the Federal Communications Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out [its] provisions. Of course, that rulemaking authority extends to the subsequently added portions of the Act.").

332(c)(7) for the simple reason that it was codified within the 1934 Act, and section 201(b) empowers the Commission to promulgate rules interpreting and implementing the entire Act.[47]

Similarly, in Iowa Utilities, the Supreme Court ruled that the FCC had rulemaking authority to implement sections 251 and 252 of the Act.[48] As with section 332, these sections did not explicitly grant the Commission power over all aspects of their implementation, arguably excluding intrastate and other areas. Nonetheless, the Court ruled that "§ 201(b) explicitly gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies."[49] These two decisions, and their underlying rationales, compel the same result for a Commission rulemaking to interpret section 230, and the rationale is simple and inarguable: if Congress chooses to codify a section into the 1934 Communications Act, then section 201(b) gives the FCC the power to clarify and implement it through regulation.

Neither section 230's text, nor any speck of legislative history, suggests any congressional intent to preclude the Commission's implementation. This silence further underscores the presumption that the Commission has power to issue regulations under section 230. As the Fifth Circuit noted with respect to section 332(c)(7), "surely Congress recognized that it was legislating against the background of the Communications Act's general grant of rulemaking authority to the FCC." [50] Accordingly, if Congress wished to exclude the Commission from the interpretation of section 230, "one would expect it to have done so explicitly." Congress did not do so and, as was the case for section 332(c)(7), that decision

[47] City of Arlington, 569 U.S. at 293 ("Of course, that rulemaking authority [of section 201(b)] extends to the subsequently added portions of the Act").
[48] Iowa Util. Bd., 525 U.S. at 378-87.
[49] Iowa Util. Bd., 525 U.S. at 380.
[50] Arlington, 668 F.3d at 250.

opens an ambiguity in section 230 that the Commission may fill pursuant to its section 201(b) rulemaking authority.

B. Background to Section 230

Section 230 reflects a congressional response to a New York state case, Stratton Oakmont, Inc. v. Prodigy Servs. Co., decided in 1995.[51] In Stratton Oakmont, a New York trial court reasoned that Prodigy had become a "publisher" under defamation law because it voluntarily deleted some messages from its message boards "on the basis of offensiveness and 'bad taste,'" and was liable for the acts of its agent, the "Board Leader" of the message board, who it had hired to monitor postings on its bulletin board. The court held that Prodigy, having undertaken an affirmative duty to remove content, therefore was legally responsible for failing to remove an allegedly defamatory posting.[52] The U.S. Court of Appeals for the Ninth Circuit explained that: "[t]he Stratton Oakmont court concluded that when a platform engages in content

[51] Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC, 521 F.3d 1157, 1163 (9th Cir. 2008) ("Section 230 was prompted by a state court case holding Prodigy responsible for a libelous message posted on one of its financial message boards"); Barnes v. Yahoo!, Inc., 570 F.3d 1096, 1101 (9th Cir. 2009) ("This is not surprising, because, as we and some of our sister circuits have recognized, Congress enacted the Amendment in part to respond to a New York state court decision, Stratton Oakmont, [citations omitted,] which held that an internet service provider could be liable for defamation."); Barrett v. Rosenthal, 40 Cal. 4th 33, 44, 146 P.3d 510, 516 (2006) ("The legislative history indicates that section 230 was enacted in response to an unreported New York trial court case."); Sen. Rep. No. 104-230, 2d. Session at 194 (1996) ("One of the specific purposes of [section 230] is to overrule Stratton Oakmont v. Prodigy and any other similar decisions"); see also H.R. Conf. Rep. No. 104-458, at 208 ("The conferees believe that [decisions like Stratton Oakmont] create serious obstacles to the important federal policy of empowering parents to determine the content of communications their children receive through interactive computer services"); 141 Congressional Record H8469–H8470 (daily ed., June 14, 1995) (statement of Rep. Cox, referring to disincentives created by the Stratton Oakmont decision); Blumenthal v. Drudge, 992 F. Supp. 44, 52 n.13 (D.D.C. 1998) ("the legislative history makes clear that one of the primary purposes of Section 230 was to overrule the Stratton Oakmont decision").

[52] Stratton Oakmont, 1995 WL 323720 at *4.

moderation, or 'some voluntary self-policing,' the platform becomes 'akin to a newspaper publisher, and thus responsible for messages on its bulletin board that defamed third parties.'"[53]

Stratton Oakmont applied established tort law, which makes "publishers" liable for defamatory material.[54] Traditionally, tort law defines "publication" as simply the "communication intentionally or by a negligent act to one other than the person defamed."[55] But because the publication element of a defamation claim can also be satisfied when someone unreasonably fails to remove a communication exhibited via means in his possession or control, the Stratton Oakmont court concluded that Prodigy's content moderation or "voluntary self-policing" of the bulletin board rendered Prodigy a publisher of a defamatory statement on its board. Therefore, Prodigy was liable as a publisher.[56]

Stratton Oakmont distinguishes an earlier case, Cubby, Inc. v. CompuServe, Inc.,[57] which ruled an internet bulletin board was not the publisher of material on its bulletin board. The key distinguishing factor was that in Cubby, CompuServe did not moderate postings. The court ruled that CompuServe was not a publisher, but rather what tort law terms a "distributor," i.e., one "who merely transmit[s] defamatory content, such as news dealers, video rental outlets,

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[53] Fair Hous. Council, 521 F.3d at 1163.
[54] Barnes, 570 F.3d at 1104, citing W. Page Keeton, et al., Prosser and Keeton on the Law of Torts § 113, at 799 (5th ed. 1984) ("[E]veryone who takes part in the publication, as in the case of the owner, editor, printer, vendor, or even carrier of a newspaper is charged with publication."); see also Cianci v. New Times Publ'g Co., 639 F.2d 54, 60–61 (2d Cir.1980) (noting the "black-letter rule that one who republishes a libel is subject to liability just as if he had published it originally").
[55] Restatement (Second) of Torts § 577.
[56] Stratton Oakmont, 1995 WL 323710 at *5 ("PRODIGY's conscious choice, to gain the benefits of editorial control, has opened it up to a greater liability than CompuServe and other computer networks that make no such choice."); Barnes, 570 F.3d at 1102 ("publication involves reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content"); see Rodney A. Smolla, Law of Defamation § 4:77 (2d ed., 1999).
[57] Cubby, 776 F.Supp. 135.

bookstores, libraries, and other distributors and vendors."[58] "Distributors" are subject to liability "if, but only if, they know or have reason to know of the content's defamatory character."[59] Thus, publishers had strict liability for materials they published, whereas distributors only had liability for publishing defamation with actual or constructive knowledge of its defamatory character.[60] The Stratton Oakmont court reasoned that, in Cubby, CompuServe "had no opportunity to review the contents of the publication at issue before it was uploaded into CompuServe's computer banks," and, therefore, CompuServe had no liability for defamatory posts on platforms that it owned and controlled as distributor.[61]

While following established common law tort rules, the Stratton Oakmont and Cubby cases presented internet platforms with a difficult choice: voluntarily moderate unlawful or obscene content and thereby become liable for all messages on their bulletin boards, or do nothing and allow unlawful and obscene content to cover their bulletin boards unfiltered. In litigation, Prodigy claimed that the "sheer volume" of message board postings it received—by our current standards a humble "60,000 a day"—made manually reviewing every message impossible. If forced to choose between taking responsibility for all messages and deleting no messages at all, it would take the latter course.[62] Thus, given the technological differences between an internet platform and a bookstore or library, the former's ability to aggregate a much greater volume of information, traditional liability rules became strained. Tort law risked dis-incentivizing platforms from editing or moderating any content for fear they would become liable for all third-party content.

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[58] Smolla § 4:92.
[59] Restatement (Second) of Torts § 581(1) (1977).
[60] Prosser, supra note 54, § 113 at 803.
[61] Stratton Oakmont, 1995 WL 323710 at *2-3.
[62] Stratton Oakmont, 1995 WL 323710 at *3.

Congress intended section 230 to address this difficult liability problem, but nothing in the law's history, purpose or text allows for the conclusion that internet platforms should avoid all responsibility for their own editing and content-moderating decisions. Indeed, section 230 was originally titled the "Online Family Empowerment" amendment to the Communications Decency Act, which was titled, "protection for private blocking and screening of offensive material." [63] Responding to pornography and obscene material on the web, Congress designed section 230 to encourage platforms to moderate specific types of content, mostly related to sexual material inappropriate to minors. Congress did not intend a vehicle to absolve internet and social media platforms—which, in the age of dial-up internet bulletin boards, such as Prodigy, did not exist—from all liability for their editorial decisions.

Representatives Christopher Cox and Ron Wyden floated the bill that became section 230 as an alternative to Senator J. James Exon's bill that criminalized the transmission of indecent material to minors.[64] In public comments, Representative Cox explained that the section 230 would reverse Stratton Oakmont and advance the regulatory goal of allowing families greater power to control online content.[65] The final statute reflected his stated policy: "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

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[63] Telecommunications Act of 1996, Pub. L. No. 104-104, title V, Sec. 509 (1996).
[64] Robert Cannon, The Legislative History of Senator Exon's Communications Decency Act: Regulating Barbarians on the Information Superhighway, 49 Fed. Comm. L.J. 51 (1996); Felix T. Wu, Collateral Censorship and the Limits of Intermediary Immunity, 87 Notre Dame L. Rev. 293, 316 (2011); 141 Cong. Rec. H8468-69 (daily ed. Aug. 4, 1995); Ashcroft v. Am. Civil Liberties Union, 535 U.S. 564, 564 (2002) ("[T]he Communications Decency Act reflected Congress's response to the proliferation of pornographic, violent and indecent content on the web Congress' first attempt to protect children from exposure to pornographic material on the Internet.").
[65] See 141 Cong. Rec. H8469-70 (daily ed. Aug. 4, 1995) (statement of Rep. Cox).

services."[66] The comments in the Congressional record from supporting congressmen and women—and it received strong bi-partisan support—reveal an understanding that the Online Family Empowerment amendment, now codified as section 230, as a non-regulatory approach to protecting children from pornography,[67] intended to provide incentives for "Good Samaritan" blocking and screening of offensive material.

C. Section 230(c)'s Structure

To further these goals, Congress drafted the "Good Samaritan" exception to publisher liability. Section 230(c)(1) has a specific focus: it prohibits "treating" "interactive computer services," i.e., internet platforms, such as Twitter or Facebook, as "publishers." But, this provision only concerns "information" provided by third parties, i.e., "another internet content provider"[68] and does not cover a platform's own content or editorial decisions.

The text of section 230(c)(1) states:

(c) Protection for "Good Samaritan" blocking and screening of offensive material:

(1) Treatment of publisher or speaker

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[66] 47 U.S.C. § 230(b)(3).

[67] See 141 Cong. Rec. H8470 (1995) (statement of Rep. White) ("I want to be sure we can protect [children] from the wrong influences on the Internet. But . . . the last person I want making that decision is the Federal Government. In my district right now there are people developing technology that will allow a parent to sit down and program the Internet to provide just the kind of materials that they want their child to see. That is where this responsibility should be, in the hands of the parent. That is why I was proud to cosponsor this bill that is what this bill does . . . ."); id., (statement of Rep. Lofgren) ("[The Senate approach] will not work. It is a misunderstanding of the technology. The private sector is out giving parents the tools that they have. I am so excited that there is more coming on. I very much endorse the Cox-Wyden amendment . . . .").

[68] 47 U.S.C. § 230(c)(1).

> No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

Section (c)(2) also has a specific focus: it eliminates liability for interactive computer services that act 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."[69]

Subsection (c)(2) governs the degree to which some of the platform's own content moderation decisions receive any legal protection, stating:

> "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 . . . ."

Here, Congress protects "any action . . . taken in good faith to restrict access to or availability of material." This means any social media platform's editorial judgment, moderation, content editing or deletion receives legal immunity, but the plain words of the provision indicate that this protection only covers decisions to restrict access to certain types of enumerated content. As discussed infra, these categories are quite limited and refer primarily to traditional areas of media regulation—also consistent with legislative history's concern that private regulation could create family-friendly internet spaces—and only actions within these categories taken in "good faith."

[69] 47 U.S.C. § 230(c)(2).

D. Expansive Court Rulings Tied to Early Platforms and Outdated Technology

Courts have recognized that "Congress enacted this provision for two basic policy reasons: to promote the free exchange of information and ideas over the Internet and to encourage voluntary monitoring for offensive or obscene material."[70] Congress intended sections 230(c)(1) and (c)(2) to protect platform openness and monitoring for certain specific issues. But, as discussed infra, ambiguous language in these statutes allowed some courts to broadly expand section 230's immunity from beyond its original purpose into a bar any legal action or claim that involves even tangentially "editorial judgment."[71] These subsequent protections established from "speaker or publisher" are overly broad and expansive, and often have absolutely nothing to do with the original harm section 230 was meant to remedy: relieving platforms of the burden of reading millions of messages to detect for defamation as Stratton Oakmont would require. Far and above initially intended viewer protection, courts have ruled section 230(c)(1) offers immunity from contracts,[72] consumer fraud,[73] revenge pornography,[74]

[70] Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1122 (9th Cir. 2003).
[71] See, e.g., Sikhs for Justice "SFJ", Inc. v. Facebook, Inc., 144 F.Supp.3d 1088, 1094–1095 (N.D.Cal. 2015).
[72] Caraccioli v. Facebook, Inc., 167 F. Supp.3d 1056, 1064-66 (N.D. Cal. 2016) (dismissing breach of contract claim and Cal. Bus. & Prof. Code § 17200 unfair practices claim); Lancaster v. Alphabet Inc., No. 2016 WL 3648608, at *5 (N.D. Cal. July 8, 2016) (dismissing claim for breach of covenant of good faith and fair dealing); Jurin v. Google, Inc., 695 F. Supp. 2d 1117, 1122–23 (E.D. Cal. 2010) (dismissing claim for fraud); Fed. Agency of News LLC, et al. v. Facebook, Inc., 395 F. Supp. 3d 1295 (N.D. Cal. 2019) (dismissing discrimination claims under Title II and 42 U.S.C. § 1983); Obado v. Magedson, 43 Media L. Rep. 1737 (D.N.J. 2014) (dismissing claim for promissory estoppel), aff'd, 612 F. App'x 90 (3d Cir. 2015).
[73] See Gentry v. eBay, Inc., 121 Cal. Rptr. 2d 703 (Cal. Ct. App. 2002); Hinton v. Amazon, 72 F. Supp. 3d 685, 687 (S. D. Miss. 2014); Oberdorf v. Amazon, 295 F. Supp. 3d 496 (Mid. D. PA Dec. 21, 2017).
[74] Jones v. Dirty World Entertainment Holding LLC, 755 F.3d 398 (6th Cir. 2014); S.C. v. Dirty World LLC, 40 Media L. Rep. 2043 (W.D. Mo. 2012); Poole v. Tumblr, Inc., 404 F. Supp. 3d 637 (D. Conn. 2019).

anti-discrimination civil rights obligations,[75] and even assisting in terrorism.[76] By expanding protections beyond defamation, these courts extend to platforms a privilege to ignore laws that every other communications medium and business must follow and that are no more costly or difficult for internet platforms to follow than any other business.

The problem of overly expansive interpretations for section 230 is not merely hypothetical. Tens of thousands of Americans have reported, among other troubling behaviors, online platforms "flagging" content as inappropriate, even though it does not violate any stated terms of service; making unannounced and unexplained changes to company policies that have the effect of disfavoring certain viewpoints; and deleting content and entire accounts with no warning, no rationale, and no recourse. As FCC Commissioner Brendan Carr has observed, social media such as Twitter "punis[h] speakers based on whether it approves or disapproves of their politics."[77] One can hardly imagine a result more contrary to Congress's intent to preserve on the internet "a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity."[78]

Further, by making contract and consumer fraud claims concerning moderation unenforceable under section 230, courts seriously injure section 230's goal "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services."[79] Content moderation policies become, as FCC Commissioner Brendan

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[75] Sikhs for Justice "SFJ", Inc., 144 F. Supp.3d 1088, 1094-1095.
[76] Force, 934 F.3d at 57.
[77] Jon Brokin, Arstechnica, FCC Republican excitedly endorses Trump's crackdown on social media, May 29, 2020, https://arstechnica.com/tech-policy/2020/05/fcc-republican-excitedly-endorses-trumps-crackdown-on-social-media/.
[78] 47 U.S.C. § 230(a)(1).
[79] 47 U.S.C. § 230(b)(2).

Carr recently described Twitter's moderation policy, "free speech for me, but not for thee." [80] Further, if interactive computer services' contractual representations about their own services cannot be enforced, interactive computer services cannot distinguish themselves. Consumers will not believe, nor should they believe, representations about online services. Thus, no service can credibly claim to offer different services, further strengthening entry barriers and exacerbating competition concerns.

Much of this overly expansive reading of section 230 rests on a selective focus on certain language from Zeran, a case from the United States of Appeals for the Fourth Circuit.[81] The line of court decisions expanding section 230 in such extravagant ways relies on Zeran's reference to: "lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred."[82] This language arguably provides full and complete immunity to the platforms for their own publications, editorial decisions, content-moderating, and affixing of warning or fact-checking statements.[83] But, it is an erroneous interpretation, plucked from its surrounding context and thus removed from its more accurate meaning.

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[80] News Break, Brendan Carr Decries Twitter Censorship as 'Free Speech for Me, but Not for Thee, June 11, 2020, https://www.newsbreak.com/news/1582183608723/brendan-carr-decries-twitter-censorship-as-free-speech-for-me-but-not-for-thee.

[81] Zeran, 129 F.3d at 327.

[82] Zeran, 129 F.3d at 330.

[83] These lines from Zeran have led some courts to adopt the so-called three part section 230(c)(1) test: (1) whether Defendant is a provider of an interactive computer service; (2) if the postings at issue are information provided by another information content provider; and (3) whether Plaintiff's claims seek to treat Defendant as a publisher or speaker of third party content. Okeke v. Cars.com, 966 N.Y.S.2d 843, 846 (Civ. Ct. 2013), citing Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 564 F. Supp. 2d 544, 548 (E.D. Va. 2008), aff'd, 591 F.3d 250 (4th Cir. 2009). As the text explains, this so-called test errs in the third prong. The question is not whether the claim treats defendant as a publisher or speaker—after all, virtually every legal claim (contract, fraud, civil rights violations) would do so. The question is whether liability is

In fact, the quotation refers to third party's exercise of traditional editorial function—not those of the platforms. As the sentence in Zeran that is immediately prior shows, section 230 "creates a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service." In other words, the liability from which section 230(c)(1) protects platforms is that arising from the content that the third-party posts—i.e. the "information" posted by "another information provider" and those information providers' editorial judgments.

In light of the history of publisher and distributor liability law upon which section 230 draws, as well as its actual text, the best way to interpret the distinction between section 230(c)(1) and (c)(2) is as follows: Section 230(c)(1) applies to acts of omission—to a platform's failure to remove certain content. In contrast, section 230(c)(2) applies to acts of commission—a platform's decisions to remove. Section 230(c)(1) does not give complete immunity to all a platform's "editorial judgments."

E. Need for FCC Regulations: Ambiguities in Section 230

Section 230 contains a number of ambiguities that courts have interpreted broadly in ways that are harmful to American consumers, free speech, and the original objective of the statute. First, as discussed below, uncertainty about the interplay between section 230(c)(1) and (c)(2) has led many courts to a construction of the two provisions that other courts consider to be anomalous or lead to rendering section 230(c)(2) superfluous. Second, the interplay between section 230(c)(1) and (c)(2) does not make clear at what point a platform's moderation and presentation of content becomes so pervasive that it becomes an information content provider

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based on the content of third-party information. Requiring platforms to monitor the content of thousands of posts was the impetus behind section 230.

and, therefore, outside of section 230(c)(1)'s protections. Third, critical phrases in section 230(c)(2)— the "otherwise objectionable" material that interactive computer service providers may block without civil liability; and the "good faith" precondition for activating that immunity—are ambiguous on their face. And, with respect to the former, courts have posited starkly divergent interpretations that can only create uncertainty for consumers and market participants. Finally, what it means to be an "information content provider" or to be "treated as a publisher or speaker" is not clear in light of today's new technology and business practices. The Commission's expertise makes it well equipped to address and remedy section 230's ambiguities and provider greater clarity for courts, platforms, and users.

1. The Interaction Between Subparagraphs (c)(1) and (c)(2)

Ambiguity in the relationship between subparagraphs (c)(1) and (c)(2) has resulted in courts reading section 230(c)(1) in an expansive way that risks rendering (c)(2) a nullity. Numerous district court cases have held that section 230(c)(1) applies to removals of content, not section 230(b)(2) with its exacting "good faith" standard."[84] For instance, in Domen v. Vimeo, a federal district court upheld the removal of videos posted by a religious groups' questioning a California law's prohibition on so-called sexual orientation change efforts (SOCE), and the law's effect on pastoral counseling. Finding the videos were "harassing," the court upheld their removal under both section 230(c)(1) and section (c)(2), ruling that these sections are co-extensive, rather than aimed at very different issues.[85] In doing so, the court rendered section

[84] Domen v. Vimeo, Inc., 433 F. Supp. 3d 592, 601 (S.D.N.Y. 2020); Lancaster v. Alphabet, Inc., 2016 WL 3648608 (N.D. Cal. July 28, 2016); Sikhs for Justice "SFJ", Inc., 144 F.Supp.3d 1088.
[85] Domen, 433 F. Supp. 3d at 601 ("the Court finds that Vimeo is entitled to immunity under either (c)(1) or (c)(2)").

230(c)(2) superfluous—reading its regulation of content removal as completely covered by section 230(c)(1)'s regulation of liability for user-generated third party content.

The Commission should promulgate a regulation to clarify the relationship between the two provisions so that section 230(c)(1) does not render section 230(c)(1) superfluous. To determine how these subparagraphs interact—or as E.O. 13925 specifically instructs: "to clarify and determine the circumstances under which a provider of an interactive computer service that restricts access to content in a manner not specifically protected by subparagraph (c)(2)(A) may also not be able to claim protection under subparagraph (c)(1),"[86] the FCC should determine whether the two subsections' scope is additive or not. While some courts have read section 230(c)(1) "broadly,"[87] few have provided any principled distinction between the two subsections.

NTIA urges the FCC to follow the canon against surplusage in any proposed rule.[88] Explaining this canon, the Supreme Court holds, "[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . . ."[89] The Court emphasizes that the canon "is strongest when an interpretation would render superfluous another part of the same statutory scheme."[90]

While some district courts, such as Domen discussed above, have ruled that section 230(c)(1) applies to content removal, which is section 230(c)(2)'s proper domain, those courts

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[86] E.O. 13925 § 2(b)(i).
[87] See Force, 934 F.3d at 64.
[88] Marx v. General Revenue Corp., 568 U.S. 371, 385 (2013).
[89] Corley v. United States, 556 U.S. 303, 314 (2009), quoting Hibbs v. Winn, 542 U.S. 88, 101 (2004).
[90] Marx, 568 U.S. at 386; see also Fair Hous. Council, 521 F.3d 1157 at 1167-68 (avoiding superfluity in interpret the "developer" exception in Section 230(f)(3) of the CDA).

that have explicitly inquired into the proper relationship between the two subparagraphs have followed the surplusage canon—ruling that the provisions cover separate issues[91] and "address different concerns."[92] "Section 230(c)(1) is concerned with liability arising from information provided online," while "[s]ection 230(c)(2) is directed at actions taken by Internet service providers or users to restrict access to online information."[93] Thus, "[s]ection 230(c)(1) provides immunity from claims by those offended by an online publication, while section 230(c)(2) protects against claims by those who might object to the restriction of access to an online publication."[94] Courts have refused to "interpret[] the CDA . . . [to allow] the general immunity in (c)(1) [to] swallow[] the more specific immunity in (c)(2)" because subsection (c)(2) immunizes only an interactive computer service's "actions taken in good faith."[95]

NTIA suggests that the FCC can clarify this relationship between section 230(c)(1) and section 230(c)(2) by establishing the following points. First, the FCC should make clear that section 230(c)(1) applies to liability directly stemming from the information provided by third-party users. Section 230(c)(1) does not immunize a platforms' own speech, its own editorial decisions or comments, or its decisions to restrict access to content or its bar user from a platform. Second, section 230(c)(2) covers decisions to restrict content or remove users.

NTIA, therefore, requests that the Federal Communications Commission add the below Subpart E to 47 CFR Chapter I:

> **Subpart E. Interpreting Subsection 230(c)(1) and Its Interaction With Subsection 230(c)(2).**

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[91] See, e.g., Zango, 568 F.3d at 1175 (holding that (c)(2) is a "different . . . statutory provision with a different aim" than (c)(1)).
[92] Barrett, 40 Cal. 4th 33.
[93] Id. at 49 (emphasis added).
[94] Id. (emphasis added).
[95] e-ventures Worldwide, LLC v. Google, Inc., (M.D. Fla. Feb. 8, 2017) 2017 U.S. Dist. LEXIS 88650, at *9.

§ 130.01
As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

(a) 47 U.S.C. 230(c)(1) applies to an interactive computer service for claims arising from failure to remove information provided by another information content provider. Section 230(c)(1) has no application to any interactive computer service's decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service. Any applicable immunity for matters described in the immediately preceding sentence shall be provided solely by 47 U.S.C. § 230(c)(2).

(b) An interactive computer service is not a publisher or speaker of information provided by another information content provider solely on account of actions voluntarily taken in good faith to restrict access to or availability of specific material in accordance with subsection (c)(2)(A) or consistent with its terms of service or use.

2. The Meaning of Section 230(c)(2)

Section 230(c)(2)'s ambiguities include (1) how to interpret "otherwise objectionable" and (2) "good faith."

a. "Otherwise objectionable"

If "otherwise objectionable" means any material that any platform "considers" objectionable, then section 230(b)(2) offers de facto immunity to all decisions to censor content. And some district courts have so construed section 230(c)(2).[96] But, many courts recognize

[96] Domen v. Vimeo, Inc., 2020 U.S. Dist. L 7935 (S.D.N.Y. Jan. 15, 2020), appeal filed No 20-616 (Feb. 18, 2020) ("Section 230(c)(2) is focused upon the provider's subjective intent of what is 'obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable.' That section 'does not require that the material actually be objectionable; rather, it affords protection for blocking material "that the provider or user considers to be' objectionable."'); Langdon v. Google, Inc., 474 F. Supp. 2d 622, 631 (D. Del. 2007) ("Plaintiff argues there was no refusal to run his ads on the basis they were obscene or harassing, and that Defendants cannot create 'purported reasons for not running his ads.' He omits, however, reference to that portion of § 230 which provides immunity from suit for restricting material that is 'otherwise objectionable.'").

limiting principles. Many look to the statutory canon of ejusdem generis, which holds that catch-all phases at the end of a statutory lists should be construed in light of the other phrases.[97] In this light, section 230(c)(2) only applies to obscene, violent, or other disturbing matters.[98]

Understanding how the section 230(c)(2) litany of terms has proved difficult for courts in determining how spam filtering and filtering for various types of malware fits into the statutory framework. Most courts have ruled that "restrict[ing] access" to spam falls within the section

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[97] Washington State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler, 537 U.S. 371, 372 (2003) ("under the established interpretative canons of noscitur a sociis and ejusdem generis, where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar to those enumerated by the specific words").

[98] Darnaa, LLC v. Google, Inc., 2016 WL 6540452 at *8 (N.D. Cal. 2016) ("The context of § 230(c)(2) appears to limit the term to that which the provider or user considers sexually offensive, violent, or harassing in content."); Song Fi, Inc. v. Google, Inc., 108 F. Supp. 3d 876, 883 (N.D. Cal. 2015) ("First, when a statute provides a list of examples followed by a catchall term (or 'residual clause') like 'otherwise objectionable,' the preceding list provides a clue as to what the drafters intended the catchall provision to mean," citing Circuit City Stores v. Adams, 532 U.S. 105, 115 (2001)). This is the rationale for the canon of construction known as eiusdem generis (often misspelled ejusdem generis), which is Latin for 'of the same kind); National Numismatic v. eBay, 2008 U.S. Dist. LEXIS 109793, at *25 (M.D. Fla. Jul. 8, 2008) ("Section 230 is captioned 'Protection for 'Good Samaritan' blocking and screening of offensive material,' yet another indication that Congress was focused on potentially offensive materials, not simply any materials undesirable to a content provider or user"); Sherman v. Yahoo! Inc., 997 F. Supp. 2d 1129 (S.D. Cal. 2014) (text messages allegedly violate Telephone Consumer Protection Act; Yahoo! raised section 230(c)(2)(B) as a defense) ("The Court declines to broadly interpret 'otherwise objectionable' material to include any or all information or content. The Ninth Circuit has expressed caution at adopting an expansive interpretation of this provision where providers of blocking software 'might abuse th[e CDA] immunity to block content for anticompetitive purposes or merely at its malicious whim, under the cover of considering such material "otherwise objectionable" under § 230(c)(2)."); Goddard v. Google, Inc., 2008 U.S. Dist. LEXIS 101890 (N.D. Cal. Dec. 17, 2008) ('[i]t is difficult to accept . . . that Congress intended the general term "objectionable" to encompass an auction of potentially-counterfeit coins when the word is preceded by seven other words that describe pornography, graphic violence, obscenity, and harassment.' In the instant case, the relevant portions of Google's Content Policy require that MSSPs provide pricing and cancellation information regarding their services. These requirements relate to business norms of fair play and transparency and are beyond the scope of § 230(c)(2).").

230(c)(2) framework, although that is difficult perhaps to see as a textual matter.[99] Spam, though irritating and destructive of the online experience, does not fit clearly into the litany in section 230, at least as courts have understood this litany.

The spam cases have prompted courts to examine the thread that runs through the list in section 230. A recent Ninth Circuit case perceptively sees the challenge: On one hand, "decisions recognizing limitations in the scope of immunity [are] persuasive,"[100] and "interpreting the statute to give providers unbridled discretion to block online content would . . . enable and potentially motivate internet-service providers to act for their own, and not the public, benefit."[101] In addition, the court did recognize that "the specific categories listed in § 230(c)(2) vary greatly: [m]aterial that is lewd or lascivious is not necessarily similar to material that is violent, or material that is harassing. If the enumerated categories are not similar, they provide little or no assistance in interpreting the more general category. We have previously recognized this concept."[102]

Yet, in fact, the original purpose of the Communications Decency Act—"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

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[99] Asurvio LP v. Malwarebytes Inc., 2020 U.S. Dist. LEXIS 53906 (N.D. Cal. Mar. 26, 2020) (allegation that M is wrongfully classifying A's software as malware); 4PC Drivers Headquarters, LP v. Malwarebytes Inc., 371 F. Supp. 3d 652 (N.D. Cal. 2019) (malware); Shulman v. FACEBOOK.com, 2018 U.S. Dist. LEXIS 113076 (D.D.C. Jul. 9, 2018) (spam); Holomaxx Technologies v. Microsoft Corp., 783 F. Supp. 2d 1097 (N.D. Cal. 2011) (spam); Smith v. Trusted Universal Stds. in Elec. Transactions, Inc., 2010 U.S. Dist. LEXIS 43360 (D. N.J. May 4, 2010) (deletion of spam); e360insight v. Comcast Corp., 546 F. Supp. 2d 605 (N.D. Ill. 2008) (spam); Zango v. Kapersky Lab., 568 F.3d 1169 (9th Cir. 2009) (competitive blocking software).

[100] Enigma Software Grp. USA, v. Malwarebytes, Inc., 946 F.3d 1040, 1050 (9th Cir. 2019).

[101] Id.

[102] Id. at 1051.

material"[103]—suggests that the thread that combines section 230(c)(2)'s concepts are those materials that were objectionable in 1996 and for which there was already regulation—regulation which Congress intended section 230 to provide incentives for free markets to emulate.

The first four adjectives in subsection (c)(2), "obscene, lewd, lascivious, filthy," are found in the Comstock Act as amended in 1909.[104] The Comstock Act prohibited the mailing of "every obscene, lewd, or lascivious, and every filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character."[105] In addition, the CDA used the terms "obscene or indecent," prohibiting the transmission of "obscene or indecent message."[106] The Act's second provision declared unconstitutional in Reno v. ACLU, section 223(d), prohibits the knowing sending or displaying of "any comment, request, suggestion, proposal, image, or other communication that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs, regardless of whether the user of such service placed the call or initiated the communication."[107] This language of "patently offensive . . ." derives from the definition of indecent speech set forth in the Pacifica decision and which the FCC continues to regulate to this day.[108]

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[103] 47 U.S.C. § 230(a)(4).
[104] Section 3893 of the Revised Statutes made by section 211 of the Criminal Code, Act of March 4, 1909, c. 321, 35 Stat. 1088, 1129; United States v. Limehouse, 285 U.S. 424, 425 (1932) (stating that "Section 211 of the Criminal Code (18 USCA § 334) declares unmailable 'every obscene, lewd, or lascivious, and every filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character") (additional citation added). The phrase is repeated in numerous state statutes.
[105] Id. at 424-6.
[106] 47 U.S. § 223(a) (May 1996 Supp.).
[107] 521 U.S. 844 (1997).
[108] FCC v. Pacifica Found., 438 U.S. 726, 732 (1978) ("patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs").

The next two terms in the list "excessively violent" and "harassing" also refer to typical concerns of communications regulation which were, in fact, stated concerns of the CDA itself. Congress and the FCC have long been concerned about the effect of violent television shows, particularly upon children; indeed, concern about violence in media was an impetus of the passage of the Telecommunications Act of 1996, of which the CDA is a part. Section 551 of the Act, entitled Parental Choice in Television Programming, requires televisions over a certain size to contain a device, later known at the V-chip. This device allows viewers to block programming according to an established rating system.[109] The legislation led to ratings for broadcast television that consisted of violent programming.[110] The FCC then used this authority to require televisions to allow blocking technology.[111]

And, of course, Congress and the FCC have long regulated harassing wire communications. Section 223, Title 47, the provision which the CDA amended and into which the CDA was in part codified, is a statute that prohibits the making of "obscene or harassing"

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[109] 47 U.S.C. § 303(x). See Technology Requirements to Enable Blocking of Video Programming Based on Program Ratings, 63 Fed. Reg. 20, 131 (Apr. 23, 1998) ("[T]he Commission is amending the rules to require . . . technological features to allow parents to block the display of violent , sexual, or other programming they believe is harmful to their children. These features are commonly referred to as 'v-chip' technology."). Finding that "[t]here is a compelling governmental interest in empowering parents to limit the negative influences of video programming that is harmful to children," Congress sought to "provid[e] parents with timely information about the nature of upcoming video programming and with the technological tools" to block undesirable programming by passing the Telecommunications Act of 1996 (the "Telecommunications Act").

[110] FCC News, Commission Finds Industry Video Programming Rating System Acceptable, Report No. GN 98-3 (Mar. 12, 1998), available at https://transition.fcc.gov/Bureaus/Cable/News_Releases/1998/nrcb8003.html.

[111] Amy Fitzgerald Ryan, Don't Touch That V-Chip: A Constitutional Defense of the Television Program Rating Provisions of the Telecommunications Act of 1996, 87 Geo. L.J. 823, 825 (1999), citing Lawrie Mifflin, TV Networks Plan Ratings System, Orange County Reg., Feb. 15, 1996, at A1.

telecommunications.[112] These harassing calls include "mak[ing] or caus[ing] the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number" or "mak[ing] repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication."[113] Roughly half of the States also outlaw "harassing" wire communications via telephone.[114] Congress enacted the Telephone Consumer Protection Act (TCPA), recently upheld in most part by the Supreme Court,[115] to ban "automated or prerecorded telephone calls, regardless of the content or the initiator of the message," that are considered "to be a nuisance and an invasion of privacy."[116]

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[112] 47 U.S.C. § 223.

[113] 47 U.S.C. § 223(a)(1)(D) & (E) (2012).

[114] See, e.g., (Arizona) Ariz. Rev. Stat. § 13-2916 ("It is unlawful for any person, with intent to terrify, intimidate, threaten or harass a specific person or persons, to do any of the following: 3. Otherwise disturb by repeated anonymous, unwanted or unsolicited electronic communications the peace, quiet or right of privacy of the person at the place where the communications were received."); (California) Cal. Pen. Code § 653m(b) ("Every person who, with intent to annoy or harass, makes repeated telephone calls or makes repeated contact by means of an electronic communication device, or makes any combination of calls or contact, to another person is, whether or not conversation ensues from making the telephone call or contact by means of an electronic communication device, guilty of a misdemeanor. Nothing in this subdivision shall apply to telephone calls or electronic contacts made in good faith or during the ordinary course and scope of business."); (Maryland) Md. Code Ann., Crim. Law § 3-804 ("A person may not use telephone facilities or equipment to make: (1) an anonymous call that is reasonably expected to annoy, abuse, torment, harass, or embarrass another; (2) repeated calls with the intent to annoy, abuse, torment, harass, or embarrass another"); (Oklahoma) 21 Okl. St. § 1172 ("It shall be unlawful for a person who, by means of a telecommunication or other electronic communication device, willfully either: 6. In conspiracy or concerted action with other persons, makes repeated calls or electronic communications or simultaneous calls or electronic communications solely to harass any person at the called number(s)").

[115] Barr v. Am. Ass'n of Political Consultants, 140 S. Ct. 2335 (2020) (upholding the Act except for its debt-collection exception).

[116] Telephone Consumer Protection Act of 1991, 105 Stat. 2394, 2395, codified at 15 U.S.C. § 6101.

Thus, the cases that struggled over how to fit spam into the list of section 230(c)(2) could simply have analogized spam as similar to harassing or nuisance phone calls.

The regulatory meanings, as understood in 1996 and used in the Communications Decency Act, itself, constitute the thread that unites the meanings of "obscene, lewd, lascivious, filthy, excessively violent, and harassing." All deal with issues involving media and communications content regulation intended to create safe, family environments. Compelling that conclusion is "the presumption of consistent usage—the rule of thumb that a term generally means the same thing each time it is used . . . [particularly for] terms appearing in the same enactment."[117] To ensure clear and consistent interpretations of the terms used in subsection 230(c)(2), NTIA requests, therefore, that the FCC add the below Subpart E to 47 CFR Chapter I:

> **Subpart E. Clarifying Subsection 230(c)(2).**
> § 130.02
> As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:
>
> **(a) "obscene," "lewd," "lascivious," and "filthy"**
> The terms "obscene," "lewd," "lascivious," and "filthy" mean material that:
> i. taken as a whole, appeals to the prurient interest in sex or portrays sexual conduct in a patently offensive way, and which, taken as a whole, does not have serious literary, artistic, political, or scientific value;
> ii. depicts or describes sexual or excretory organs or activities in terms patently offensive as measured by contemporary community standards; to the average person, applying contemporary community standards; or
> iii. signifies the form of immorality which has relation to sexual impurity, and have the same meaning as is given them at common law in prosecutions for obscene libel.
>
> **(b) "excessively violent"**
> The term "excessively violent" means material that:
> i. is likely to be deemed violent and for mature audiences according the Federal Communications Commission's V-chip regulatory regime and TV Parental Guidance, promulgated pursuant to Section 551 of the 1996

[117] United States v. Castleman, 572 U.S. 157, 174 (2014), citing IBP, Inc. v. Alvarez, 546 U.S. 21, 33–34 (2005) (Scalia, J., conc.).

Telecommunications Act, Pub. L. No. 104-104, § 551, 110 Stat. 139-42 (codified at 47 U.S.C. § 303; § 330(c)(4)); or

ii. constitutes or intends to advocate domestic terrorism or international terrorism, each as defined in 18 U.S.C. § 2331 ("terrorism").

(c) "harassing"

The term "harassing" means any material that:

i. that sent by an information content provider that has the subjective intent to abuse, threaten, or harass any specific person and is lacking in any serious literary, artistic, political, or scientific value;

ii. regulated by the CAN-SPAM Act of 2003, 117 Stat. 2699; or

iii. that is malicious computer code intended (whether or not by the immediate disseminator) to damage or interfere with the operation of a computer.

(d) "otherwise objectionable"

The term "otherwise objectionable" means any material that is similar in type to obscene, lewd, lascivious, filthy, excessively violent, or harassing materials.

b. "Good faith"

The phrase "good faith" in section 230(c) is also ambiguous. On one hand, most courts, in interpreting the phrase, have looked to pretext, dishonesty, or refusing to explain wrongful behavior when finding good faith or lack thereof in the removal of content. As the United States Court of Appeals for the Ninth Circuit explains, "unless § 230(c)(2)(B) imposes some good faith limitation on what a blocking software provider can consider 'otherwise objectionable' . . . immunity might stretch to cover conduct Congress very likely did not intend to immunize." Under the generous coverage of section 230(c)(2)(B)'s immunity language, a blocking software provider might abuse that immunity to block content for anticompetitive purposes or merely at its malicious whim, under the cover of considering such material "otherwise objectionable."[118] At the same time, some courts, focusing the words "the provider or user considers to be

[118] Zango, 568 F.3d at 1178 (Fisher, J., concurring). The Ninth Circuit has adopted Judge Fisher's reasoning. See Enigma, 946 F.3d at 1049.

obscene," see the provision's immunity available whenever an interactive computer service simply claims to consider the material as fitting within the provision's categories. Thus, "good faith" simply means the existence of some "subjective intent."[119]

Good faith requires transparency about content moderation disputes processes. In order to qualify for section 230(c)(2)'s immunity, a social media platform, or any interactive computer service, must demonstrate in a transparent way that when it takes action pursuant to section 230(c)(2), it provides adequate notice, reasoned explanation, or a meaningful opportunity to be heard."[120]

To ensure clear and consistent interpretation of the "good faith" standard, NTIA requests that the FCC further add the below to newly requested 47 CFR Chapter I Subchapter E Section 130.02:

> **(e) "good faith"**
> A platform restricts access to or availability of specific material (including, without limitation, its scope or reach) by itself, any agent, or any unrelated party in "good faith" under 47 U.S.C. § (c)(2)(A) if it:
>
> i. restricts access to or availability of material or bars or refuses service to any person consistent with publicly available terms of service or use that state plainly and with particularity the criteria the interactive computer service employs in its content-moderation practices, including by any partially or fully automated processes, and that are in effect on the date such content is first posted;
> ii. has an objectively reasonable belief that the material falls within one of the listed categories set forth in 47 U.S.C. § 230(c)(2)(A);
> iii. does not restrict access to or availability of material on deceptive or pretextual grounds, and does not apply its terms of service or use to restrict access to or availability of material that is similarly situated to material that the interactive computer service intentionally declines to restrict; and
> iv. supplies the interactive computer service of the material with timely notice describing with particularity the interactive computer service's reasonable factual basis for the restriction of access and a meaningful opportunity to respond, unless the interactive computer service has an objectively

[119] Domen, 433 F.Supp. 3d 592.
[120] E.O. 13925, Sec. 2(b).

reasonable belief that the content is related to criminal activity or such notice would risk imminent physical harm to others.

3. Section 230(c)(1) and 230(f)(3)

Section 230(c)(1) places "information content providers," i.e., entities that create and post content, outside its protections. This means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the internet, does not receive the statute's shield. Numerous cases have found that interactive computer service's designs and policies render it an internet content provider, outside of section 230(c)(1)'s protection. But the point at which a platform's form and policies are so intertwined with users' postings so as to render the platform an "information content provider" is not clear.

Courts have proposed numerous interpretations, most influentially in the Ninth Circuit in Fair Housing Council of San Fernando Valley v. Roommates.Com.[121] There, the court found that "[b]y requiring subscribers to provide the information as a condition of accessing its service, and by providing a limited set of pre-populated answers, Roommate becomes much more than a passive transmitter of information."[122] The court continued, "[w]e interpret the term 'development' as referring not merely to augmenting the content generally, but to materially contributing to its alleged unlawfulness. In other words, a website helps to develop unlawful content, and thus falls within the exception to section 230, if it contributes materially to the alleged illegality of the conduct."[123] But, this definition has failed to provide clear guidance, with courts struggling to define "material contribution."[124]

[121] Fair Hous. Council, 521 F.3d at 1166.
[122] Id.
[123] Id. at 1167–68 (emphasis added); see also Dirty World Entertainment, 755 F.3d at 411.
[124] See, e.g., People v. Bollaert, 248 Cal. App. 4th 699, 717 (2016).

Further, not all courts accept the material contribution standard. The Seventh Circuit concludes that "[a] company can, however, be liable for creating and posting, inducing another to post, or otherwise actively participating in the posting of a defamatory statement in a forum that that company maintains."[125] Other circuits conclude that a website becomes an information content provider by "solicit[ing] requests" for the information and then "pa[ying] researchers to obtain it."[126]

This confusion stems from the difference between the way an online bulletin board worked in the 1990s, which simply posted content, and how social media works today. As Federal Trade Commissioner Rohit Chopra explained, new social media shape and control information and online experience often as an expression of platforms' and their advertisers' goals rather than their users':

> "[Section 230] seeks to foster an environment where information and ideas can flourish. If a company is just helping move information from point A to point B, that company is just like the mail carrier or the telegraph company. That makes sense . . . . But the tech market has dramatically shifted in the decades since this law was enacted . . . . I would argue that once platforms started prioritizing their paid predictions, the content became more a reflection of advertisers targeting users, than users' own preferences."[127]

In light of modern technology, the FCC should clarify the circumstances under which an interactive computer service becomes an information content provider. Interactive computer services that editorialize particular user comments by adding special responses or warnings appear to develop and create content in any normal use of the words. Analogously, district

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[125] Huon v. Denton, 841 F.3d 733, 742 (7th Cir. 2016).
[126] FTC v. Accusearch Inc., 570 F.3d 1187, 1199–1200 (10th Cir. 2009).
[127] Rohit Chopra, Tech Platforms, Content Creators, and Immunity, American Bar Association, Section of Antitrust Law Annual Spring Meeting, Washington, D.C. (Mar. 28, 2019) (transcript available online at https://www.ftc.gov/system/files/documents/public_statements/1510713/chopra_-_aba_spring_meeting_3-28-19_0.pdf (last visited June 15, 2020)).

courts have concluded that when interactive computer services' "employees . . . authored comments," the interactive computer services would become content providers.[128] In addition, prioritization of content under a variety of techniques, particularly when it appears to reflect a particularly viewpoint, might render an entire platform a vehicle for expression and thus an information content provider.

To clarify when interactive computer services become information content providers through developing and creating content through the presentation of user-provided material, NTIA requests that the FCC add the below Subpart E to 47 CFR Chapter I:

> **Subpart E. Clarifying Subsection 230(f)(2).**
> § 130.03
> As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:
>
> For purposes of 47 U.S.C. § 230(f)(3), "responsible, in whole or in part, for the creation or development of information" includes substantively contributing to, modifying, altering, presenting or prioritizing with a reasonably discernible viewpoint, commenting upon, or editorializing about content provided by another information content provider.

4. "Treated as a Publisher or Speaker"

Finally, the ambiguous term "treated as a publisher or speaker" is a fundamental question for interpreting that courts in general have not addressed squarely. One of the animating concerns for section 230 was court decisions holding online platforms liable as publishers for third-party speech, when in fact they were merely passive bulletin boards. By prohibiting an interactive computer service from being "treated" as a publisher or speaker, therefore, section 230 could be interpreted as not converting non-publisher platforms into publishers simply because they passively transmit third-party content. That does not, however, mean that the

[128] Huon, 841 F.3d at 742.

statute meant to immunize online platforms when they actually act as publishers and exert significant control over the third-party speech and the message it conveys.

FCC Chairman Pai made a similar point by asking if selective content moderation based on ideology eventually becomes "editorial judgment":

> Are these tech giants running impartial digital platforms over which they don't exercise editorial judgment when it comes to content? Or do they in fact decide what speech is allowed and what is not and discriminate based on ideology and/or political affiliation? [129]

If content-moderating can never, no matter how extreme or arbitrary, become editorializing that no longer remains the "speech of another," then section 230(c)(1) will subsume section 230(c)(2) and eliminate liability for all interactive computer services' decisions to restrict content. Interpreting "speaker or publisher" so broadly is especially harmful when platforms are opaque and deceptive in their content-monitoring policies.

This concern is hardly theoretical, given the highly inconsistent, baffling, and even ideologically driven content moderating decisions that the large interactive computer services have made, at least according to numerous accounts. For instance, one interactive computer service made the editorial decision to exclude legal content pertaining to firearms,[130] content that was deemed acceptable for broadcast television,[131] thereby chilling the speech of a political candidate supportive of gun rights. Another interactive computer service has suppressed the

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[129] Ajit Pai, What I Hope to Learn from the Tech Giants, FCC Blog (Sept. 4, 2018), https://www.fcc.gov/news-events/blog/2018/09/04/what-i-hope-learn-tech-giants.
[130] Facebook, Inc., Facebook Prohibited Content: 7. Weapons, Ammunition, or Explosives, https://www.facebook.com/policies/ads/prohibited_content/weapons (last visited June 15, 2020).
[131] Maria Schultz, Facebook pulls ad from gun-toting Georgia candidate taking on Antifa: 'Big Tech censorship of conservatives must end', Fox News (June 6, 2020), https://www.foxnews.com/politics/facebook-pulls-ad-from-gun-toting-georgia-candidate-big-tech-censorship-of-conservatives-must-end.

speech of an American politician for "glorifying violence"[132] while permitting that of a foreign politician glorifying violence to pass without action,[133] as publicly noted by the FCC Chairman.[134] Still another interactive computer service, purporting to be a document repository and editing service,[135] deleted a controversial paper about a potential therapy for COVID-19,[136] stating simply that it was in violation of the site terms of service.[137] A major food-workers' union has objected to social media-implemented internal communication networks for companies, or "intranets," implementing automated censorship to prevent discussions of unionization.[138]

At common law, as a general matter, one is liable for defamation only if one makes "an affirmative act of publication to a third party."[139] This "affirmative act requirement" ordinarily

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[132] Alex Hern, Twitter hides Donald Trump tweet for 'glorifying violence', The Guardian (May 29, 2020), https://www.theguardian.com/technology/2020/may/29/twitter-hides-donald-trump-tweet-glorifying-violence.
[133] White House official Twitter account (May 29, 2020), https://twitter.com/WhiteHouse/status/1266367168603721728.
[134] Ajit Pai verified Twitter account (May 29, 2020), https://twitter.com/AjitPaiFCC/status/1266368492258816002.
[135] Google, Inc., Google Docs "About" page, https://www.google.com/docs/about/ (last visited June 15, 2020) ("Google Docs brings your documents to life with smart editing and styling tools to help you easily format text and paragraphs. Choose from hundreds of fonts, add links, images, and drawings. All for free . . . . Access, create, and edit your documents wherever you go — from your phone, tablet, or computer — even when there's no connection.").
[136] Thomas R. Broker, et al., An Effective Treatment for Coronavirus (COVID-19), (Mar. 13, 2020), page archived at https://archive.is/BvzkY (last visited June 15, 2020).
[137] Google, Inc., Google Docs result for https://docs.google.com/document/d/e/2PACX-1vTi-g18ftNZUMRAj2SwRPodtscFio7bJ7GdNgbJAGbdfF67WuRJB3ZsidgpidB2eocFHAVjIL-7deJ7/pub (last visited June 15, 2020) ("We're sorry. You can't access this item because it is in violation of our Terms of Service.").
[138] United Food and Commercial Workers International Union, Facebook Censorship of Worker Efforts to Unionize Threatens Push to Strengthen Protections for Essential Workers During COVID-19 Pandemic (June 12, 2020), http://www.ufcw.org/2020/06/12/censorship/.
[139] Benjamin C. Zipursky, Online Defamation, Legal Concepts, and the Good Samaritan, 51 Val. U. L. Rev. 1, 18 (2016) , available at https://scholar.valpo.edu/cgi/viewcontent.cgi?article=2426&context=vulr.

"depict[s] the defendant as part of the initial making or publishing of a statement."[140] The common law also recognized a "narrow exception to the rule that there must be an affirmative act of publishing a statement."[141] A person "while not actually publishing—will be subjected to liability for the reputational injury that is attributable to the defendant's failure to remove a defamatory statement published by another person."[142] Such a duty might apply where a defendant has undertaken an affirmative duty to remove. Stratton Oakmont embodies the latter idea: The court held that Prodigy, having undertaken to moderate some content on its page, thereby assumed an affirmative duty to moderate all content on its site. At common law, then, the publication element of defamation could be satisfied either through the rule—an affirmative act—or the exception—an omission where an affirmative duty applies.

Section 230(c)(1)'s "treated as the publisher or speaker" could plausibly be understood to foreclose liability only if a defendant would satisfy the exception. Satisfying the exception subjects one to defamation liability as if he were the publisher or speaker of the content, although he did not "actually publish[]" the content.[143] He is not a "true publisher" in the sense of satisfying the affirmative act requirement, but he is deemed or regarded as if he were because he had an affirmative duty to moderate.[144] This interpretation of section 230(c)(1) reads it to foreclose the very argument courts may have been on track to embrace after Stratton Oakmont, viz., that a platform has an affirmative duty to remove defamatory content and will be treated as satisfying the publication element of defamation for nonfeasance in the same way as a true publisher. Section 230(c)(1) states—in the face of Stratton Oakmont's contrary holding—a

[140] Id. at 19.
[141] Id. at 20.
[142] Id. at 21 (citing Restatement (Second) of Torts § 577(2) (Am. Law Inst. 1977)).
[143] Zipursky, 51 Val. L. Rev. at 21.
[144] Id. at 45.

general rule: There is no affirmative duty to remove. For that reason, section 230(c)(1) should be construed to concern only failures to remove and not takedowns, and not to apply when a platform "actually publishes" content.

NTIA suggests that the FCC can clarify the ambiguous phrase "speaker or publisher" by establishing that section 230(c)(1) does not immunize the conduct of an interactive service provider that is actually acting as a publisher or speaker in the traditional sense. Two points follow. First, when a platform moderates outside of section 230(c)(2)(A), section 230(c)(1) does not provide an additional, broader immunity that shields content takedowns more generally. Such affirmative acts are outside of the scope of (c)(1). Second, when a platform reviews third-party content already displayed on the internet and affirmatively vouches for it, editorializes, recommends, or promotes such content on the basis of the content's substance or message, the platform receives no section 230(c)(1) immunity. NTIA therefore requests that the FCC further add the below to newly requested Subpart E to 47 CFR Chapter I:

Subpart E. Clarifying Subsection 230(f)(2).

§ 130.04

(c) An interactive computer service is not being "treated as the publisher or speaker of any information provided by another information content provider" when it actually publishes its own or third-party content. Circumstances in which an interactive computer service actually publishes content include when:

(i) it affirmatively solicits or selects to display information or content either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool pursuant to a reasonably discernible viewpoint or message, without having been prompted to, asked to, or searched for by the user; and
(ii) it reviews third-party content already displayed on the Internet and affirmatively vouches for, editorializes, recommends, or promotes such content to other Internet users on the basis of the content's substance or messages. This paragraph applies to a review conducted, and a recommendation made, either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool.

(d) An interactive computer service does not publish content merely by:

(i) providing content in a form or manner that the user chooses, such as non-chronological order, explicit user preferences, or because a default setting of the service provides it, and the interactive computer service fully informs the user of this default and allows its disabling; or

(ii) transmitting, displaying, or otherwise distributing such content, or merely by virtue of moderating third-party content consistent with a good faith application of its terms of service in force at the time content is first posted. Such an interactive computer service may not, by virtue of such conduct, be "treated as a publisher or speaker" of that third-party content. 47 U.S.C. § 230(c)(1).

VI. Title I and Sections 163 and 257 of the Act Permit the FCC to Impose Disclosure Requirements on Information Services

With roots in the Modified Final Judgment for the break-up of AT&T[145] and codified by the Telecommunications Act of 1996,[146] the term "information service" refers to making information available via telecommunications. Under FCC and judicial precedent, social media sites are "information services." As such, courts have long recognized the Commission's power to require disclosure of these services under sections 163 and 257.

A. Social media are information services

Section 230(f)(2) explicitly classifies "interactive computer services" as "information services," as defined in 47 U.S.C. § 153(20).[147] Further, social media fits the FCC's definition of

[145] United States v. Am. Tel. & Tel. Co., 552 F. Supp. 131, 179 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) (observing that "'Information services' are defined in the proposed decree at Section IV(J) as: the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information which may be conveyed via telecommunications").

[146] 47 U.S.C. § 153(24).

[147] Id. ("[T]he offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.").

enhanced services.[148] In Brand X, the Supreme Court explained, "The definitions of the terms 'telecommunications service' and 'information service' established by the 1996 Act are similar to the Computer II basic-and enhanced-service classifications" with "'information service'—the analog to enhanced service."[149]

Numerous courts have ruled that search engines, browsers and internet social media precursors such as chat rooms are information services.[150] Courts have long recognized edge providers as information services under Title I. For example, in Barnes, the U.S. Court of Appeals for the Ninth Circuit classifies Yahoo's social networking services an "information service," interchangeably with "interactive computer service," and in Howard v. Am. Online, the same court designates America Online's messaging facilities "enhanced services."[151]

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[148] 47 CFR § 64.702 ("[S]ervices, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information.").

[149] Nat'l Cable & Telecommunications Ass'n v. Brand X Internet Servs., 545 U.S. 967, 977 (2005).

[150] Mozilla Corp. v. F.C.C., 940 F.3d 1, 34 (D.C. Cir. 2019) ("But quite apart from the fact that the role of ISP-provided browsers and search engines appears very modest compared to that of DNS and caching in ISPs' overall provision of Internet access, Petitioners are in a weak posture to deny that inclusion of 'search engines and web browsers' could support an 'information service' designation . . . since those appear to be examples of the 'walled garden' services that Petitioners hold up as models of 'information service'-eligible offerings in their gloss of Brand X.") (internal citations omitted); FTC v. Am. eVoice, Ltd., 242 F. Supp. 3d 1119 (D. Mont. 2017) (Email and online "chat rooms" "were enhanced services because they utilized transmission lines to function, as opposed to acting as a pipeline for the transfer of information . . . . 'This conclusion is reasonable because e-mail fits the definition of an enhanced service.'" (quoting Howard v. Am. Online Inc., 208 F.3d 741, 746 (9th Cir. 2000)). "Also excluded from coverage are all information services, such as Internet service providers or services such as Prodigy and America-On-Line." H.R. Rep. No. 103-827, at 18 (1994), as reprinted in 1994 U.S.C.C.A.N. 3489, 3498

[151] Barnes, 570 F.3d at 1101.

B. Several statutory sections empower the FCC to mandate disclosure

Beyond having jurisdiction over social media as information services, the FCC has clear statutory authority to impose disclosure requirements under sections 163 and 257 of the Communications Act. Section 163 charges the FCC to "consider all forms of competition, including the effect of intermodal competition, facilities-based competition, and competition from new and emergent communications services, including the provision of content and communications using the Internet" and "assess whether laws, regulations, regulatory practices . . . pose a barrier to competitive entry into the communications marketplace or to the competitive expansion of existing providers of communications services."[152] Section 257(a) of the Communications Act requires the FCC to examine market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services."[153]

In its 2018 Internet Order, the Commission relied on section 257 to impose service transparency requirements on providers of the information service of broadband internet access. It reasoned that doing so would reduce entry barriers.[154] Similar reasoning applies to requiring transparency for social media. Clear, current, readily accessible and understandable descriptions of an interactive computer service provider's content moderation policies would help enterprising content providers fashion their offerings so that they can be provided across multiple

[152] 47 U.S.C. § 163.
[153] 47 U.S.C. § 257(a) (2018). While section 257 was amended and repealed in part, its authority remained intact in section 163. "Congress emphasized that '[n]othing in this title [the amendment to the Telecommunications Act creating section 163] or the amendments made by this title shall be construed to expand or contract the authority of the Commission." Mozilla, 940 F.3d at 47 citing Pub. L. No. 115-141, Div. P, § 403, 132 Stat. at 1090.
[154] Federal Communications Commission, In the Matter of Restoring Internet Freedom, 33 F.C.C. Rcd. 311 (2018).

platforms with reduced costs and friction for the provider and fewer disruptions to user experiences.[155]

Perhaps more important, information about an interactive computer service provider's content moderation policies would help entities design filtering products that could improve the providers' implementation of those policies, or assist consumers in remedying the gaps they may see in the providers' policies. Certainly, empowering consumers with blocking technologies that they choose and control—rather than accepting a platform's top-down centralized decisions, would directly advance section 230's policy of encouraging "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."[156] Increasing transparency about online platforms' content moderation practices would also enable users to make more informed choices about competitive alternatives.

Consumers today have a one-way relationship with social media transparency; platforms know everything about consumers, but consumers know very little about how or why platforms exercise influence or direct control over consumers' speech. Certain information disappears or becomes difficult to find, while other information is promoted and prominently displayed. Inevitably, some consumers and content creators begin to worry that secretive forces within platform providers are manipulating social media for ends that can only be guessed at.[157] Such suspicion is inevitable when there is so little transparency about the process behind the social media visibility of user-provided content, even when policies are applied fairly and no

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[155] See supra Section IV.
[156] 47 U.S.C. § 230(a)(3).
[157] Rod Dreher, Google Blacklists Conservative Websites (July 21, 2020), https://www.theamericanconservative.com/dreher/google-blacklists-conservative-websites/.

wrongdoing has taken place. By increasing transparency to consumers, platforms would ensure that consumers can choose to consume social media whose policies they agree with without fear that manipulations to which they did not consent are happening behind the scenes.

The importance of disclosure to our communications networks cannot be underestimated. Chairman Pai recognizes that democracies must require transparency and to ensure the proper function of essential communications networks.[158] That is why, when eliminating Title II common carrier so-called "network neutrality" regulations, Chairman Pai's FCC retained Title I disclosure requirements for broadband access service providers.

The same is true for other information service providers. Speaking of the social media platforms, FCC Chairman Ajit Pai asked "how do these companies make decisions about what we see and what we don't? And who makes those decisions?"[159] For social media, it is particularly important to ensure that large firms avoid "deceptive or pretextual actions stifling free and open debate by censoring certain viewpoints,"[160] or engage in deceptive or pretextual actions (often contrary to their stated terms of service) to stifle viewpoints with which they disagree."[161]

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[158] Federal Communications Commission, In the Matter of Restoring Internet Freedom, WC Docket No. 17-108, Declaratory Ruling, Report And Order, And Order (Jan, 4, 2018) ¶ 209, available at https://www.fcc.gov/document/fcc-releases-restoring-internet-freedom-order ("'Sunlight,' Justice Brandeis famously noted, 'is . . . the best of disinfectants.' This is the case in our domain. Properly tailored transparency disclosures provide valuable information to the Commission to enable it to meet its statutory obligation to observe the communications marketplace to monitor the introduction of new services and technologies, and to identify and eliminate potential marketplace barriers for the provision of information services. Such disclosures also provide valuable information to other Internet ecosystem participants.").

[159] Ajit Pai, What I Hope to Learn from the Tech Giants (Sept. 4, 2018), https://www.fcc.gov/news-events/blog/2018/09/04/what-i-hope-learn-tech-giants (last visited June 15, 2020).

[160] E.O. 13925, Section 2(a).

[161] Id.

To prevent these ends, NTIA requests that the FCC further add the below to Subpart E to 47 CFR Chapter I Subchapter A Part 8:

§ 8.2 Transparency for Interactive Computer Services.

Any person providing an interactive computer service in a manner through a mass-market retail offering to the public shall publicly disclose accurate information regarding its content-management mechanisms as well as any other content moderation, promotion, and other curation practices of its interactive computer service sufficient to enable (i) consumers to make informed choices regarding the purchase and use of such service and (ii) entrepreneurs and other small businesses to develop, market, and maintain offerings by means of such service. Such disclosure shall be made via a publicly available, easily accessible website or through transmittal to the Commission.

VII. Conclusion

For the foregoing reasons, NTIA respectfully requests that the Commission institute a rulemaking to interpret Section 230 of the Communications Act.

Respectfully submitted,

Douglas Kinkoph

Douglas Kinkoph
Performing the Delegated Duties of the
Assistant Secretary for Commerce for
Communications and Information

July 27, 2020

APPENDIX A: Proposed Rules

47 CFR Chapter I, Subchapter E
Part 130 – Section 230 of the Communications Decency Act.

Interpreting Subsection 230(c)(1) and Its Interaction With Subsection 230(c)(2).
§ 130.01
As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

(a) 47 U.S.C. 230(c)(1) applies to an interactive computer service for claims arising from failure to remove information provided by another information content provider. Section 230(c)(1) has no application to any interactive computer service's decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service. Any applicable immunity for matters described in the immediately preceding sentence shall be provided solely by 47 U.S.C. § 230(c)(2).

(b) An interactive computer service is not a publisher or speaker of information provided by another information content provider solely on account of actions voluntarily taken in good faith to restrict access to or availability of specific material in accordance with subsection (c)(2)(A) or consistent with its terms of service or use.

(c) An interactive computer service is not being "treated as the publisher or speaker of any information provided by another information content provider" when it actually publishes its own or third-party content. Circumstances in which an interactive computer service actually publishes content include when:

(i) it affirmatively solicits or selects to display information or content either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool pursuant to a reasonably discernible viewpoint or message, without having been prompted to, asked to, or searched for by the user;

(ii) it reviews third-party content already displayed on the Internet and affirmatively vouches for, editorializes, recommends, or promotes such content to other Internet users on the basis of the content's substance. This paragraph applies to a review conducted, and a recommendation made, either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool.

(d) An interactive computer service does not publish content merely by:

(1) providing content in a form or manner that the user chooses, such as non-chronological order, explicit user preferences, or because a default

setting of the service provides it, and the interactive computer service fully informs the user of this default and allows its disabling; or
(2) transmitting, displaying, or otherwise distributing such content, or merely by virtue of moderating third-party content consistent with a good faith application of its terms of service in force at the time content is first posted. Such an interactive computer service may not, by virtue of such conduct, be "treated as a publisher or speaker" of that third-party content. 47 U.S.C. § 230(c)(1).

Clarifying Subsection 230(c)(2).
§ 130.02
As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

(a) "obscene," "lewd," lascivious" and "filthy"
The terms "obscene," "lewd," "lascivious," and "filthy" mean material that

iv. taken as a whole, appeals to the prurient interest in sex or portrays sexual conduct in a patently offensive way, and which, taken as a whole, does not have serious literary, artistic, political, or scientific value;
v. depicts or describes sexual or excretory organs or activities in terms patently offensive as measured by contemporary community standards; to the average person, applying contemporary community standards; or
vi. signifies the form of immorality which has relation to sexual impurity, and have the same meaning as is given them at common law in prosecutions for obscene libel.

(b) "excessively violent"
The term "excessively violent" means material that

iii. is likely to be deemed violent and for mature audiences according the Federal Communications Commission's V-chip regulatory regime and TV Parental Guidance, promulgated pursuant to Section 551 of the 1996 Telecommunications Act Pub. L. No. 104-104, § 551, 110 Stat. 139-42 (codified at 47 U.S.C. § 303; § 330(c)(4));
iv. constitutes or intends to advocate domestic terrorism or international terrorism, each as defined in 18 U.S.C. § 2331 ("terrorism").

(c) "harassing"
The term "harassing" means any material that

iv. that sent by an information content provider that has the subjective intent to abuse, threaten, or harass any specific person and is lacking in any serious literary, artistic, political, or scientific value;
v. regulated by the CAN-SPAM Act of 2003, 117 Stat. 2699; or
vi. that is malicious computer code intended (whether or not by the immediate disseminator) to damage or interfere with the operation of a computer.

(d) "otherwise objectionable"
The term "otherwise objectionable" means any material that is similar in type to obscene, lewd, lascivious, filthy, excessively violent, or harassing materials.

(e) "good faith"

A platform restricts access to or availability of specific material (including, without limitation, its scope or reach) by itself, any agent, or any unrelated party in "good faith" under 47 U.S.C. § (c)(2)(A) if it:

v. restricts access to or availability of material or bars or refuses service to any person consistent with publicly available terms of service or use that state plainly and with particularity the criteria the interactive computer service employs in its content-moderation practices, including by any partially or fully automated processes, and that are in effect on the date such content is first posted;

vi. has an objectively reasonable belief that the material falls within one of the listed categories set forth in 47 U.S.C. § 230(c)(2)(A);

vii. does not restrict access to or availability of material on deceptive or pretextual grounds, and does not apply its terms of service or use to restrict access to or availability of material that is similarly situated to material that the interactive computer service intentionally declines to restrict; and

viii. supplies the interactive computer service of the material with timely notice describing with particularity the interactive computer service's reasonable factual basis for the restriction of access and a meaningful opportunity to respond, unless the interactive computer service has an objectively reasonable belief that the content is related to criminal activity or such notice would risk imminent physical harm to others.

Clarifying Subsection 230(f)(2).

§ 130.03

As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

For purposes of 47 U.S.C. § 230(f)(3), "responsible, in whole or in part, for the creation or development of information" includes substantively contributing to, modifying, altering, presenting with a reasonably discernible viewpoint, commenting upon, or editorializing about content provided by another information content provider.

47 CFR Chapter I Subchapter A Part 8 ---Internet Freedom.

§ 8.2 Transparency for Interactive Computer Services.

Any person providing an interactive computer service in a manner through a mass-market retail offering to the public shall publicly disclose accurate information regarding its content-management mechanisms as well as any other content moderation, promotion, and other curation practices of its interactive computer service sufficient to enable (i) consumers to make informed choices regarding the purchase and use of such service and (ii) entrepreneurs and other small businesses to develop, market, and maintain offerings by means of such service. Such disclosure shall be made via a publicly available, easily accessible website or through transmittal to the Commission.

From:	Candeub, Adam
To:	Adam Candeub
Subject:	FW: NTIA Petition for Rulemaking re: Social Media Executive Order
Date:	Saturday, September 12, 2020 10:53:00 AM
Attachments:	NTIA Social Media Petition for Rulemaking 7.27.20.pdf

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From: Smith, Kathy <KSmith@ntia.gov>
Sent: Monday, July 27, 2020 4:11 PM
To: Kinkoph, Douglas <DKinkoph@ntia.gov>; Candeub, Adam <acandeub@ntia.gov>; Simington, Nathan <nsimington@ntia.gov>
Cc: Yusko, Stephen F. <SYusko@ntia.gov>
Subject: RE: NTIA Petition for Rulemaking re: Social Media Executive Order

I have scrubbed it one more time for metadata and this is the document I will file at 5 p.m.

From: Kinkoph, Douglas <DKinkoph@ntia.gov>
Sent: Monday, July 27, 2020 4:08 PM
To: Smith, Kathy <KSmith@ntia.gov>; Candeub, Adam <acandeub@ntia.gov>; Simington, Nathan <nsimington@ntia.gov>
Cc: Yusko, Stephen F. <SYusko@ntia.gov>
Subject: RE: NTIA Petition for Rulemaking re: Social Media Executive Order

Signed copy attached.

Doug

From: Smith, Kathy <KSmith@ntia.gov>
Sent: Monday, July 27, 2020 3:58 PM
To: Kinkoph, Douglas <DKinkoph@ntia.gov>; Candeub, Adam <acandeub@ntia.gov>; Simington, Nathan <nsimington@ntia.gov>
Cc: Yusko, Stephen F. <SYusko@ntia.gov>
Subject: NTIA Petition for Rulemaking re: Social Media Executive Order

Attached please find a Word file containing the final of the Petition for Rulemaking that incorporates the last few minor footnote edits (Adam and Nathan) and Doug's signature block and deletes the Table of Authorities. Please note the Word file still contains the metadata so I would recommend not sharing it outside of Commerce even under an embargo

I have also attached a pdf file for signature. It has been stripped of all metadata.

Please sign it (when you regain access to Citrix) and send it back to me. I will file it through ECFS at 5 p.m. today and send you all the confirmation page.

Kathy Smith
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National Telecommunications and Information Administration
U.S. Department of Commerce
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HCHB 4713
Washington, DC 20230
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Section 230 of the	)	File No. RM-_____
Communications Act of 1934	)	

To: The Commission

PETITION FOR RULEMAKING OF THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

National Telecommunications and
Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230
(202) 482-1816

July 27, 2020

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Before the
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To: The Commission

PETITION FOR RULEMAKING OF THE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

Pursuant to section 1.401 of the Code of Federal Regulations,[1] in accordance with Executive Order 13925 (E.O. 13925),[2] and through the National Telecommunications and Information Administration (NTIA), the Secretary of Commerce (Secretary) respectfully requests that the Federal Communications Commission (FCC or Commission) initiate a rulemaking to clarify the provisions of section 230 of the Communications Act of 1934, as amended.[3] NTIA, as the President's principal adviser on domestic and international telecommunications and information policy, is charged with developing and advocating policies concerning the regulation of the telecommunications industry and "ensur[ing] that the views of the executive branch on telecommunications matters are effectively presented to the Commission . . . ."[4] Specifically, per E.O. 13925, NTIA requests that the Commission propose rules to clarify:

[1] 47 CFR § 1.401(a).
[2] Exec. Order No. 13925: Preventing Online Censorship, 85 Fed. Reg. 34,079 (June 2, 2020) (E.O. 13925).
[3] 47 U.S.C. § 230.
[4] 47 U.S.C. § 902(b)(2)(J); see also 47 U.S.C. §§ 901(c)(3), 902(b)(2)(I) (setting forth related duties).

(i) the interaction between subparagraphs (c)(1) and (c)(2) of section 230, in particular to clarify and determine the circumstances under which a provider of an interactive computer service that restricts access to content in a manner not specifically protected by subparagraph (c)(2)(a) may also not be able to claim protection under subparagraph (c)(1);[5]

(ii) the conditions under which an action restricting access to or availability of material is not "taken in good faith" within the meaning of subparagraph (c)(2)(A) of section 230, particularly whether actions can be "taken in good faith" if they are

(A) deceptive, pretextual, or inconsistent with a provider's terms of service; or

(B) taken after failing to provide adequate notice, reasoned explanation, or a meaningful opportunity to be heard;[6] and

(iii) any another proposed regulation that NTIA concludes may be appropriate to advance the policy described in subsection (a) of E.O. 13925, to impose disclosure requirements similar those imposed on other internet companies, such as major broadband service providers, to promote free and open debate on the internet.[7]

[5] See infra sections V.E.1, V.E.3 and section V.E.4.
[6] See infra section V.E.2.
[7] See infra section VI.

I. Statement of Interest

Since its inception in 1978, NTIA has consistently supported pro-competitive, pro-consumer telecommunications and internet policies. NTIA files this petition pursuant to E.O. 13925 to ensure that section 230 of the Communications Act of 1934, as amended, continues to further these goals. The President, through E.O. 13925, has directed the Secretary to file this petition for rulemaking through NTIA.[8]

II. Summary of Argument

Freedom of expression defends all our other freedoms. Only in a society that protects free expression can citizens criticize their leaders without fear, check their excesses, and expose their abuses. As Ben Franklin stated, "[w]hoever would overthrow the Liberty of a Nation, must begin by subduing the Freeness of Speech."[9] However, social media and its growing dominance present troubling questions on how to preserve First Amendment ideals and promote diversity of voices in modern communications technology. Social media's power stems in part from the legal immunities granted by the Communications Decency Act of 1996.[10] Congress passed the statute in the beginning of the internet age with the goal of creating a safe internet for children. It did so by protecting children from pornography and providing incentives for platforms to

[8] E.O. 13925, Section 2(b).
[9] Benjamin Franklin, Silence Dogood No. 8, The New-England Courant, July 9, 1722.
[10] Communications Decency Act of 1996 (CDA), Pub. L. No. 104-104, 110 Stat. 133, Title V—Obscenity and Violence, § 509 "Online family empowerment," codified at 47 U.S.C. 230, "Protection for private blocking and screening of offensive material." The CDA was incorporated as Title V to the Telecommunications Act of 1996, which in turn, was incorporated in the Communications Act of 1934. While these laws are all now part of the same statute, they do have separate histories and will be referred to individually when necessary.

remove harmful content. While the Supreme Court struck down the provisions limiting pornography, section 230 remained.[11]

Section 230 is the legislative response to a New York state case, Stratton Oakmont, Inc. v. Prodigy Servs. Co.[12] In this case, the court extended tort liability to internet bulletin boards and ruled that defendant Prodigy Services Company would be liable for the entire content of their platform if they engaged in editing and moderation to remove distasteful content.[13] Congress intended section 230 to offer platforms immunity from liability under certain circumstances, namely to encourage platforms to moderate specific types of material, mostly that are sexual or inappropriate to minors. It is vital to remember, however, that Congress in section 230 also had the express purpose of ensuring that the "Internet and other [internet platforms] offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity."[14]

Times have changed, and the liability rules appropriate in 1996 may no longer further Congress's purpose that section 230 further a "true diversity of political discourse." A handful of large social media platforms delivering varied types of content over high-speed internet have replaced the sprawling world of dial-up Internet Service Providers (ISPs) and countless bulletin boards hosting static postings. Further, with artificial intelligence and automated methods of textual analysis to flag harmful content now available, unlike at the time of Stratton Oakmont, Inc., platforms no longer need to manually review each individual post but can review, at much

[11] Reno v. American Civil Liberties Union, 521 U.S. 844 (1997).
[12] 1995 WL 323710 (N.Y. Sup. Ct., May 24, 1995) (unpublished). See also, Force v. Facebook, Inc., 934 F.3d 53, 63-64 (2d Cir. 2019) ("To overrule Stratton . . . .").
[13] Stratton Oakmont, 1995 WL 323710, at *3.
[14] 47 U.S.C. § 230(a)(3).

lower cost, millions of posts.[15] Thus, the fundamental assumptions driving early section 230 interpretation are antiquated and lack force, thus necessitating a recalibration of section 230 protections to accommodate modern platforms and technologies.

The FCC should use its authorities to clarify ambiguities in section 230 so as to make its interpretation appropriate to the current internet marketplace and provide clearer guidance to courts, platforms, and users. NTIA urges the FCC to promulgate rules addressing the following points:

1. Clarify the relationship between subsections (c)(1) and (c)(2), lest they be read and applied in a manner that renders (c)(2) superfluous as some courts appear to be doing.

2. Specify that Section 230(c)(1) has no application to any interactive computer service's decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service.

3. Provide clearer guidance to courts, platforms, and users, on what content falls within (c)(2) immunity, particularly section 230(c)(2)'s "otherwise objectionable" language and its requirement that all removals be done in "good faith."

4. Specify that "responsible, in whole or in part, for the creation or development of information" in the definition of "information content provider," 47 U.S.C. § 230(f)(3), includes editorial decisions that modify or alter content, including but not limited to substantively contributing to, commenting upon, editorializing about, or presenting with a discernible viewpoint content provided by another information content provider.

[15] Adrian Shahbaz & Allie Funk, "Freedom on the Net 2019 Key Finding: Governments harness big data for social media surveillance," Freedom House, Social Media Surveillance, https://freedomhouse.org/report/freedom-on-the-net/2019/the-crisis-of-social-media/social-media-surveillance ("Social media surveillance refers to the collection and processing of personal data pulled from digital communication platforms, often through automated technology that allows for real-time aggregation, organization, and analysis of large amounts of metadata and content . . . . Advances in artificial intelligence (AI) have opened up new possibilities for automated mass surveillance.").

5. Mandate disclosure for internet transparency similar to that required of other internet companies, such as broadband service providers.

III. The Commission Should Act to Protect Free Speech Online

New regulations guiding the interpretation of section 230 are necessary to facilitate the provisions' interpretation in a way that best captures one of the nation's most important Constitutional freedoms. "Free speech is the bedrock of American democracy . . . . The freedom to express and debate ideas is the foundation for all of our rights as a free people."[16] Our democracy has long recognized that control of public discourse in the hands of too few stifles freedom of expression and risks undermining our political institutions. For centuries, Americans have taken action to maintain the free flow of information and ideas to ensure the fullest and most robust marketplace of ideas—from the Postal Service Act of 1792, one of Congress's first acts which established preferential rates for newspapers,[17] to nondiscrimination requirements for telegraphs and telephones,[18] to antitrust actions to ensure the free flow of news stories,[19] and to efforts to limit undue dominance in broadcast and cable media to guarantee the flow of information to television viewers.[20]

Yet today, free speech faces new threats. Many Americans follow the news, stay in touch with friends and family, and share their views on current events through social media and other

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[16] E.O. 13925, Section 1.
[17] Richard B. Kielbowicz, News in the Mail: The Press, Post Office and Public Information, 1700-1860s, at 33-34 (1989).
[18] Thomas B. Nachbar, The Public Network, 17 CommLaw Conspectus 67, 77 (2008). ("Nondiscriminatory access is . . . the order of the day for . . . telecommunications, and even cable television.").
[19] Associated Press v. United States, 326 U.S. 1 (1945).
[20] Turner Broad. Sys, Inc. v. F.C.C., 512 U.S. 622 (1994); F.C.C. v. National Citizens Comm. for Broad., 436 U.S. 775 (1978); Nat'l Broad. Co. v. United States, 319 U.S. 190 (1943); Time Warner Ent. Co. L.P. v. F.C.C., 240 F.3d 1126 (D.C. Cir. 2001).

online platforms. These platforms function, as the Supreme Court recognized, as a 21st century equivalent of the public square.[21] Provision and control of the public square is a public trust. Because it entails selecting which speech gets heard and by whom, social media can assimilate a collective conversation into a corporate voice with a corporate point of view. As the E.O. explains, "[w]hen large, powerful social media companies censor opinions with which they disagree, they exercise a dangerous power. They cease functioning as passive bulletin boards, and ought to be viewed and treated as content creators."[22] The Commission itself has previously recognized the importance of enabling "the widest possible dissemination of information from diverse and antagonistic sources" and "assuring that the public has access to a multiplicity of information sources" as internet regulations' essential goal.[23]

Unfortunately, large online platforms appear to engage in selective censorship that is harming our national discourse. The E.O. notes that "[t]ens of thousands of Americans have reported online platforms "flagging" content as inappropriate, even though it does not violate any stated terms of service" and is not unlawful. The platforms "mak[e] unannounced and unexplained changes to company policies that have the effect of disfavoring certain viewpoints and delet[e] content and entire accounts with no warning, no rationale, and no recourse."[24] FCC

[21] Packingham v. North Carolina, 137 S. Ct. 1730, 1732 (2017) ("Social media . . . are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge.").
[22] E.O. 13925, Section 1.
[23] Federal Communications Commission, In the Matter of Protecting and Promoting the Open Internet, GN Docket No. 14-28, FCC 15-24, Report and Order on Remand, Declaratory Ruling, and Order, 2015 WL 1120110, *268 (¶ 545) (quoting Turner, 512 U.S. at 663).
[24] E.O. 13925, Section 1; Divino Group LLC, et al. v. Google LLC, et al., 5:19-cv-4749-VKD, Dkt #20 (2d Am. Compl.) at ¶¶ 119-123, 128-247 (N.D. Cal. (San Jose Division), dated Aug. 13, 2019) (class action complaint alleging YouTube censorship of LGBT+ content).

Commissioner Brendan Carr has remarked, "there's no question that [large social media platforms] are engaging in editorial conduct, that these are not neutral platforms."[25] Others have expressed shock that while large social media platforms will censor or fact-check constitutionally elected democratic leaders, many social media companies welcome and facilitate censorship by the Chinese Communist Party, thereby spreading disinformation and communist propaganda related to China's mass imprisonment of religious minorities, the origins of the COVID-19 pandemic, and the pro-democracy protests in Hong Kong.[26] Unfortunately, few academic empirical studies exist of the phenomenon of social media bias.

Much of social media's overarching influence and power stems from the immunities it enjoys under expansive interpretations of section 230 of the Communications Decency Act,[27] a provision Congress passed in 1996 at the beginning of the internet era. Many early cases, understandably protective of a nascent industry, read section 230's protections expansively. But, given the maturing internet economy and emergence of dominant social media platforms, the FCC should re-examine section 230, as well as other provisions of the Communications Act of 1934. The FCC should determine how section 230 can best serve its goals of promoting internet

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[25] Jan Jekielek, On Social Media Bias, Trump's Executive Order, and the China Data Threat: FCC Commissioner Brendan Carr, The Epoch Times, June 1, 2020, https://www.theepochtimes.com/on-social-media-bias-trumps-executive-order-and-the-china-data-threat-fcc-commissioner-brendan-carr_3372161.html.

[26] See, e.g., Sigal Samuel, China paid Facebook and Twitter to help spread anti-Muslim propaganda, Vox, Aug. 22, 2019, https://www.vox.com/future-perfect/2019/8/22/20826971/facebook-twitter-china-misinformation-ughiur-muslim-internment-camps; Ryan Gallagher, China's Disinformation Effort Targets Virus, Researcher Says, Bloomberg News, May 12, 2020, https://www.bloomberg.com/news/articles/2020-05-12/china-s-disinformation-campaign-targets-virus-and-businessman; James Titcomb & Laurence Dodds, Chinese state media use Facebook adverts to champion Hong Kong crackdown, June 8, 2020, https://www.telegraph.co.uk/technology/2020/06/08/chinese-state-media-use-facebook-adverts-champion-hong-kong/.

[27] 47 U.S.C. § 230.

diversity and a free flow of ideas, as well as holding dominant platforms accountable for their editorial decisions, in new market conditions and technologies that have emerged since the 1990s.[28]

IV. Relevant Facts and Data: Technological and Market Changes

Contemporary social media platforms have vastly different offerings, business models, relationships to users and customers, and, indeed, roles in national life than the early online bulletin boards that Prodigy and AOL offered in 1996. The FCC should recognize that the liability protections appropriate to internet firms in 1996 are different because modern firms have much greater economic power, play a bigger, if not dominant, role in American political and social discourse, and, with machine learning and other artificial techniques, have and exercise much greater power to control and monitor content and users.

CompuServe, Prodigy, America Online, and their competitors had fundamentally different business models from modern social media companies.[29] They had proprietary server banks, and their business model was to charge consumers for access, with significant surcharges

[28] See, e.g., Cubby, Inc. v. CompuServe Inc., 776 F.Supp. 135 (S.D.N.Y. 1991) (addressing CompuServe's 1990 service providing various online subscriber forums for certain groups).
[29] Andrew Pollack, Ruling May Not Aid Videotex, N.Y. Times, Sept. 15, 1987, at D1, https://www.nytimes.com/1987/09/15/business/ruling-may-not-aid-videotex.html (last visited July 27, 2020) ("The Videotex Industry Association estimates that there are 40 consumer-oriented services, such as CompuServe and the Source, in the United States, with a total membership of 750,000.").

for use of social features.[30] They were not interoperable,[31] There was thus no online "general public" population about whom information could be known, nor were there business partners to whom information on members of the public could be aggregated and sold. Online services faced a competitive landscape.

Online services competed with one another by commissioning or developing their own games, chat systems, financial-markets reporting, news services, and in-network mail services.[32] As users paid to connect, and thus directly funded online services, most online services did not contain advertising. The online service business model was not significantly reliant on third-party content because access to proprietary content was at the heart of online services' marketing

[30] Id. ("It is unclear, for instance, to what extent the gateway will be able to tell consumers where to go for the information they desire . . . . Each information service has its own commands for information retrieval."); Michael J. Himowitz, A look at on-line services CompuServe and Prodigy, The Baltimore Sun, Jan. 17, 1994 ("CompuServe [costs] $8.95 per month . . . . Effective Feb. 6, rates for forums and extended services . . . are an additional $4.80 per hour at 1200 or 2400 Baud, $9.60 per hour at 9600 or 14,400 Baud . . . . Prodigy: Most popular plan charges $14.95 per month . . . Additional Plus hours [for use of bulletin boards and stock market prices] are $3.60 each.").

[31] Pollack, supra note 29 ("Each information service has its own commands for information retrieval. With a useful gateway [which did not yet exist], the user would need to know only one set of commands and the gateway would translate them."); David Bernstein, Interoperability: The Key to Cloud Applications, https://e.huawei.com/en/publications/global/ict_insights/hw_376150/feature%20story/HW_376286 (last visited July 19, 2020) ("[T]he original online services such as AOL, Prodigy, and CompuServe had no interoperability between them. Content posted on one service could not be consumed by a client connected to a different service. Email could not be sent from a user on one service to a user on another.").

[32] Joanna Pearlstein, MacWorld's Guide to Online Services, MacWorld, Aug. 1994, at 90 ("Core services include general, business, and sports news; computer forums and news; reference materials; electronic mail and bulletin boards; business statistics and data; games; shopping services; travel services; and educational reference material. Still, the different online services do have different emphases, so even though they all offer a range of basic services, they are not interchangeable.").

efforts.[33] The online services of the late 1990s ran online bulletin boards as a minor sideline and used volunteer moderators from the computer hobbyist community.[34] Their business model was based on fees for connection time and professional database access, not community content.

One result of this model was that monitoring users and their content was a burden and regulatory imposition. Zeran, a leading and widely cited case on moderation, reflects this understanding of the technology of that time.[35] The Zeran court took the view, which most section 230 cases accept, that "liability [for third-party posts] upon notice [by an offended

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[33] James Coats, Getting on-line with cyberspace heavyweights, Chicago Tribune, Feb. 28, 1993 at C8 ("GEnie's greatest value to me is that it serves as a gateway to the ultraexpensive Dow Jones News/Retrieval service. Typing DOWJONES on GEnie gets me access to hundreds of thousands of newspaper articles - but at a cost well above $2 a minute. Still, when I'm involved in personal research, it empowers me with access to more than 100 different newspapers, wire services and magazines . . . . A costly service [on CompuServe] called IQUEST, for example, gets you access to thousands of newspapers, magazines, books and other research materials. A magazine database lets you search hundreds of thousands of back issues of publications from Playboy to Foreign Policy. The catch is that each article you decide to read in full costs $1.50 . . . . Tremendous amounts of information about stocks and investing can be had as well, for a price. You can follow favorite stocks by BasicQuotes and seek out news by company. Much of the famous Standard and Poor's research data can be had on CompuServe's S&P Online. Most company filings with the Securities and Exchange Commission can be downloaded on a service called Disclosure. I make heavy use of CompuServe's Executive News Service, which gives me an electronic 'clipping service' providing each day's news about dozens of firms I follow for my job, as well as other topics . . . . But Delphi takes the Internet much further than the other boards, which confine Internet traffic to electronic mail. With Delphi you can actually hook your home computer up with mainframes and minicomputers all around the world and read and download an almost unimaginably diverse wealth of files.").

[34] Catherine Buni & Soraya Chemaly, The Secret Rules of the Internet: the murky history of moderation, and how it's shaping the future of free speech, The Verge (April 13, 2016), https://www.theverge.com/2016/4/13/11387934/internet-moderator-history-youtube-facebook-reddit-censorship-free-speech (last visited July 19, 2020) ("Moderation's initially haphazard, laissez-faire culture has its roots here. Before companies understood how a lack of moderation could impede growth and degrade brands and community, moderators were volunteers; unpaid and virtually invisible. At AOL, moderation was managed by a Community Leader program composed of users who had previously moderated chat rooms and reported 'offensive' content. They were tasked with building 'communities' in exchange for having their subscription fees waived. By 2000, companies had begun to take a more proactive approach.").

[35] Zeran v. Am. Online, Inc., 129 F.3d 327 (4th Cir. 1997).

viewer] reinforces service providers' incentives to restrict speech and abstain from self-regulation."[36] The court went on to explain that online services cannot possibly take responsibility for third-party content due to its volume; as such, online services will simply prohibit all such content unless they are protected from liability for it. In the court's words:

> "If computer service providers were subject to distributor liability, they would face potential liability each time they receive notice of a potentially defamatory statement—from any party, concerning any message. Each notification would require a careful yet rapid investigation of the circumstances surrounding the posted information, a legal judgment concerning the information's defamatory character, and an on-the-spot editorial decision whether to risk liability by allowing the continued publication of that information. Although this might be feasible for the traditional print publisher, the sheer number of postings on interactive computer services would create an impossible burden in the Internet context."[37]

However, today's social media companies have adopted a different business model. Rather than provide database access, like Prodigy did, social media offers primarily third-party content.[38] Rather than charge fees, social media platforms profile users in order to categorize

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[36] Id. at 333.
[37] Id.
[38] Facebook Investor Relations, https://investor.fb.com/resources/default.aspx (last visited July 19, 2020) ("Founded in 2004, Facebook's mission is to give people the power to build community and bring the world closer together. People use Facebook to stay connected with friends and family, to discover what's going on in the world, and to share and express what matters to them."); Twitter Investor Relations, https://investor.twitterinc.com/contact/faq/default.aspx (last visited July 19, 2020) ("What is Twitter's mission statement? The mission we serve as Twitter, Inc. is to give everyone the power to create and share ideas and information instantly without barriers. Our business and revenue will always follow that mission in ways that improve – and do not detract from – a free and global conversation."); Google, Our Approach to Search, https://www.google.com/search/howsearchworks/mission/ (last visited July 19, 2020) ("Our company mission is to organize the world's information and make it universally accessible and useful."); YouTube Mission Statement, https://www.youtube.com/about/ (last visited July 19, 2020) ("Our mission is to give everyone a voice and show them the world. We believe that everyone deserves to have a voice, and that the world is a better place when we listen, share and build community through our stories."); Matt Buchanan, Instagram and the Impulse to Capture Every Moment, The New Yorker, June 20, 2013, https://www.newyorker.com/tech/annals-of-technology/instagram-and-the-impulse-to-capture-every-moment (last visited July 27, 2020)

them and connect them to advertisers and other parties interested in user information.[39] Online platforms like Twitter, Facebook, and YouTube have content moderation at the heart of their business models. Unlike the early internet platforms, they have invested immense resources into both professional manual moderation and automated content screening for promotion, demotion, monetization, and removal.[40]

("When I think about what Instagram is, I think about moments," said Kevin Systrom, the photo-sharing service's co-founder and C.E.O. "Our mission is to capture and share the world's moments.").

[39] Len Sherman, Why Facebook Will Never Change Its Business Model, Forbes.com, Apr, 16, 2018, https://www.forbes.com/sites/lensherman/2018/04/16/why-facebook-will-never-change-its-business-model/#7cdac11c64a7 (last visited July 27, 2020) ("By now, it's widely understood that Facebook's voracious appetite for user data is driven by their business model which charges advertisers for access to precisely targeted segments of their massive consumer database. No one knows more about more consumers than Facebook"); Twitter and Facebook have differing business models, The Economist, June 6, 2020, https://www.economist.com/business/2020/06/04/twitter-and-facebook-have-differing-business-models (last visited July 27, 2020) ("At first blush, Twitter and Facebook look similar. Each is a social network, connecting users online and presenting them with content in a 'feed', a never-ending list of posts, pictures and videos of pets. Each makes money by selling advertising, and thus has an interest in using every trick to attract users' attention. And each employs gobbets of data gleaned from users' behaviour to allow advertisers to hit targets precisely, for which they pay handsomely"); Enrique Dans, Google Vs. Facebook: Similar Business Models, But With Some Very Big Differences, Forbes.com, Feb. 2, 2019, https://www.forbes.com/sites/enriquedans/2019/02/02/google-vs-facebook-similar-business-models-but-with-some-very-big-differences/#6ab9408541ef (last visited July 27, 2020) ("Google does not sell my data or pass it on to any third party, it simply allows that third party to display an advertisement to a segment of its database that includes me, based on certain variables . . . . What is the result of Google knowing about us and our online interests? We receive ads that largely reflect those interests and we still have some control over what we see.").

[40] Zoe Thomas, Facebook content moderators paid to work from home, BBC.com, Mar. 18, 2020, https://www.bbc.com/news/technology-51954968 (last visited July 27, 2020) ("Facebook has approximately 15,000 content moderators in the US, who are hired by third-party contracting companies"); Elizabeth Dwoskin, et al., Content moderators at YouTube, Facebook and Twitter see the worst of the web — and suffer silently, Washington Post, July 25, 2019, https://www.washingtonpost.com/technology/2019/07/25/social-media-companies-are-outsourcing-their-dirty-work-philippines-generation-workers-is-paying-price/ (last visited July 27, 2020) ("In the last couple of years, social media companies have created tens of thousands of jobs around the world to vet and delete violent or offensive content . . . ."); Shannon Bond, Facebook, YouTube Warn Of More Mistakes As Machines Replace Moderators, National Public

Understanding how new entrants can or cannot participate in these intermediary markets is therefore key in understanding appropriate liability regimes; this is particularly important because liability shields can deter entrance. Market observers have significant concerns about barriers to entrance for new social media companies as well as social media's role with other edge providers in creating mediation markets. It is no secret that today's online platforms exist in highly concentrated markets.[41] Moreover, the relationship between social media and their adjacent markets is unclear, with mergers and other agreements having the potential for unexpected anticompetitive results.[42] Social media firms also demonstrate network effects and other barriers to entry, which frequently lead to weaker competition.[43] This lack of competition is particularly troubling given the decrease of new entrants documented in the broader economy.[44]

Section 230 was designed to assist the nascent internet industry. Pivotal judicial decisions, such as Zeran, interpreted ambiguous language in section 230 broadly, but at a time when different cost structures, business models, and markets prevailed. Given the rapidly

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Radio, March 31, 2020, https://www.npr.org/2020/03/31/820174744/facebook-youtube-warn-of-more-mistakes-as-machines-replace-moderators (last visited July 27, 2020) ("Facebook, YouTube and Twitter are relying more heavily on automated systems to flag content that violate their rules . . . . Tech companies have been saying for years that they want computers to take on more of the work of keeping misinformation, violence and other objectionable content off their platforms. Now the coronavirus outbreak is accelerating their use of algorithms rather than human reviewers.").

[41] Justin Haucap & Ulrich Heimeshoff, Google, Facebook, Amazon, eBay: Is the Internet driving competition or market monopolization? 11 Int. Econ. Policy 49–61 (2014).

[42] Carl Shapiro, Protecting Competition in the American Economy: Merger Control, Tech Titans, Labor Markets. 33(3) Journal of Economic Perspectives 69 (2019), available at http://faculty.haas.berkeley.edu/shapiro/protectingcompetition.pdf.

[43] Steven Berry, Martin Gaynor & Fiona Scott Morton, Do Increasing Markups Matter? Lessons from Empirical Industrial Organization, 33(3) Journal of Economic Perspectives 44 (2019).

[44] Germán Gutiérrez & Thomas Philippon, The Failure of Free Entry. NBER Working Paper No. 26001 (June 2019), available at https://www.nber.org/papers/w26001.pdf.

changing markets and relationship between market structure and optimal liability rules, NTIA urges the FCC to re-examine section 230 and work towards transparency in these markets.

V. The Authority and Need for Issuing Regulations for Section 230

This section sets forth the FCC's authority to issue regulations to interpret section 230 and shows how regulations are necessary to resolve the statute's ambiguities that the E.O. identified. This section further explains how the FCC has jurisdiction to issue regulations, outlines the background and history of section 230, explains its structure, and shows how courts have relied upon its ambiguities to make overly expansive interpretations.

Finally, it examines how the section's ambiguities should be resolved. Specifically, NTIA respectfully requests the FCC to:

- clarify the relationship between 230(c)(1) and (c)(2);
- explain the meaning of "good faith" and "otherwise objectionable" in section 230(c)(2);
- specify how the limitation on the meaning of "interactive computer service" found in section 230(f)(2) should be read into section 230(c)(1); and,
- explicate the meaning of "treated as a speaker or publisher" in section 230(c)(1).

A. The Commission's Power to Interpret Section 230 of the Communications Decency Act

Section 201(b) of the Communications Act (Act) empowers the Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out this chapter."[45] Under this authority, the FCC should promulgate rules to resolve ambiguities in Section 230. The Supreme Court has confirmed that "the grant in section 201(b) means what it

[45] 47 U.S.C. § 201(b).

says: The FCC has rulemaking authority to carry out the 'provisions of this Act.'" Section 230, in turn, was incorporated into the Act – in the same portion of the Act, Title II, as section 201(b) – by the Telecommunications Act of 1996 (1996 Act). The fact that section 230 was enacted after section 201(b) is of no consequence; the Supreme Court repeatedly has held that the Commission's section 201(b) rulemaking power extends to all subsequently enacted provisions of the Act, specifically identifying those added by the Telecommunications Act of 1996.[46] Thus, the Commission has authority under section 201(b) to initiate a rulemaking to implement section 230. That broad rulemaking authority includes the power to clarify the language of that provision, as requested in the petition.

The Commission has authority to implement section 230 through regulation even if this section was added to the 1934 Act through the amendments in the Telecommunications Act of 1996. It does not matter if the provision specifically mentions or contemplates FCC regulation. For instance, section 332(c)(7), which was also added to the Act by the 1996 Act, limits State and local decision-making on the placement, construction, or modification of certain wireless service facilities. The section makes no mention of FCC authority, only alluding to the Commission in passing and giving it no role in the provision's implementation. The Supreme Court nonetheless, upheld Commission's authority to issue regulations pursuant to section

[46] AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366, 378 (1999) ("We think that the grant in § 201(b) means what it says: The FCC has rulemaking authority to carry out the "provisions of this Act," which include §§ 251 and 252, added by the Telecommunications Act of 1996"); City of Arlington v. FCC, 668 F.3d 229, 250 (5th Cir. 2012), aff'd, 569 U.S. 290 (2013) ("Section 201(b) of that Act empowers the Federal Communications Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out [its] provisions. Of course, that rulemaking authority extends to the subsequently added portions of the Act.").

332(c)(7) for the simple reason that it was codified within the 1934 Act, and section 201(b) empowers the Commission to promulgate rules interpreting and implementing the entire Act.[47]

Similarly, in Iowa Utilities, the Supreme Court ruled that the FCC had rulemaking authority to implement sections 251 and 252 of the Act.[48] As with section 332, these sections did not explicitly grant the Commission power over all aspects of their implementation, arguably excluding intrastate and other areas. Nonetheless, the Court ruled that "§ 201(b) explicitly gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies."[49] These two decisions, and their underlying rationales, compel the same result for a Commission rulemaking to interpret section 230, and the rationale is simple and inarguable: if Congress chooses to codify a section into the 1934 Communications Act, then section 201(b) gives the FCC the power to clarify and implement it through regulation.

Neither section 230's text, nor any speck of legislative history, suggests any congressional intent to preclude the Commission's implementation. This silence further underscores the presumption that the Commission has power to issue regulations under section 230. As the Fifth Circuit noted with respect to section 332(c)(7), "surely Congress recognized that it was legislating against the background of the Communications Act's general grant of rulemaking authority to the FCC." [50] Accordingly, if Congress wished to exclude the Commission from the interpretation of section 230, "one would expect it to have done so explicitly." Congress did not do so and, as was the case for section 332(c)(7), that decision

[47] City of Arlington, 569 U.S. at 293 ("Of course, that rulemaking authority [of section 201(b)] extends to the subsequently added portions of the Act").
[48] Iowa Util. Bd., 525 U.S. at 378-87.
[49] Iowa Util. Bd., 525 U.S. at 380.
[50] Arlington, 668 F.3d at 250.

opens an ambiguity in section 230 that the Commission may fill pursuant to its section 201(b) rulemaking authority.

B. Background to Section 230

Section 230 reflects a congressional response to a New York state case, Stratton Oakmont, Inc. v. Prodigy Servs. Co., decided in 1995.[51] In Stratton Oakmont, a New York trial court reasoned that Prodigy had become a "publisher" under defamation law because it voluntarily deleted some messages from its message boards "on the basis of offensiveness and 'bad taste,'" and was liable for the acts of its agent, the "Board Leader" of the message board, who it had hired to monitor postings on its bulletin board. The court held that Prodigy, having undertaken an affirmative duty to remove content, therefore was legally responsible for failing to remove an allegedly defamatory posting.[52] The U.S. Court of Appeals for the Ninth Circuit explained that: "[t]he Stratton Oakmont court concluded that when a platform engages in content

[51] Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC, 521 F.3d 1157, 1163 (9th Cir. 2008) ("Section 230 was prompted by a state court case holding Prodigy responsible for a libelous message posted on one of its financial message boards"); Barnes v. Yahoo!, Inc., 570 F.3d 1096, 1101 (9th Cir. 2009) ("This is not surprising, because, as we and some of our sister circuits have recognized, Congress enacted the Amendment in part to respond to a New York state court decision, Stratton Oakmont, [citations omitted,] which held that an internet service provider could be liable for defamation."); Barrett v. Rosenthal, 40 Cal. 4th 33, 44, 146 P.3d 510, 516 (2006) ("The legislative history indicates that section 230 was enacted in response to an unreported New York trial court case."); Sen. Rep. No. 104-230, 2d. Session at 194 (1996) ("One of the specific purposes of [section 230] is to overrule Stratton Oakmont v. Prodigy and any other similar decisions"); see also H.R. Conf. Rep. No. 104-458, at 208 ("The conferees believe that [decisions like Stratton Oakmont] create serious obstacles to the important federal policy of empowering parents to determine the content of communications their children receive through interactive computer services"); 141 Congressional Record H8469–H8470 (daily ed., June 14, 1995) (statement of Rep. Cox, referring to disincentives created by the Stratton Oakmont decision); Blumenthal v. Drudge, 992 F. Supp. 44, 52 n.13 (D.D.C. 1998) ("the legislative history makes clear that one of the primary purposes of Section 230 was to overrule the Stratton Oakmont decision").

[52] Stratton Oakmont, 1995 WL 323720 at *4.

moderation, or 'some voluntary self-policing,' the platform becomes 'akin to a newspaper publisher, and thus responsible for messages on its bulletin board that defamed third parties.'"[53]

Stratton Oakmont applied established tort law, which makes "publishers" liable for defamatory material.[54] Traditionally, tort law defines "publication" as simply the "communication intentionally or by a negligent act to one other than the person defamed."[55] But because the publication element of a defamation claim can also be satisfied when someone unreasonably fails to remove a communication exhibited via means in his possession or control, the Stratton Oakmont court concluded that Prodigy's content moderation or "voluntary self-policing" of the bulletin board rendered Prodigy a publisher of a defamatory statement on its board. Therefore, Prodigy was liable as a publisher.[56]

Stratton Oakmont distinguishes an earlier case, Cubby, Inc. v. CompuServe, Inc.,[57] which ruled an internet bulletin board was not the publisher of material on its bulletin board. The key distinguishing factor was that in Cubby, CompuServe did not moderate postings. The court ruled that CompuServe was not a publisher, but rather what tort law terms a "distributor," i.e., one "who merely transmit[s] defamatory content, such as news dealers, video rental outlets,

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[53] Fair Hous. Council, 521 F.3d at 1163.
[54] Barnes, 570 F.3d at 1104, citing W. Page Keeton, et al., Prosser and Keeton on the Law of Torts § 113, at 799 (5th ed. 1984) ("[E]veryone who takes part in the publication, as in the case of the owner, editor, printer, vendor, or even carrier of a newspaper is charged with publication."); see also Cianci v. New Times Publ'g Co., 639 F.2d 54, 60–61 (2d Cir.1980) (noting the "black-letter rule that one who republishes a libel is subject to liability just as if he had published it originally").
[55] Restatement (Second) of Torts § 577.
[56] Stratton Oakmont, 1995 WL 323710 at *5 ("PRODIGY's conscious choice, to gain the benefits of editorial control, has opened it up to a greater liability than CompuServe and other computer networks that make no such choice."); Barnes, 570 F.3d at 1102 ("publication involves reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content"); see Rodney A. Smolla, Law of Defamation § 4:77 (2d ed., 1999).
[57] Cubby, 776 F.Supp. 135.

bookstores, libraries, and other distributors and vendors."[58] "Distributors" are subject to liability "if, but only if, they know or have reason to know of the content's defamatory character."[59] Thus, publishers had strict liability for materials they published, whereas distributors only had liability for publishing defamation with actual or constructive knowledge of its defamatory character.[60] The Stratton Oakmont court reasoned that, in Cubby, CompuServe "had no opportunity to review the contents of the publication at issue before it was uploaded into CompuServe's computer banks," and, therefore, CompuServe had no liability for defamatory posts on platforms that it owned and controlled as distributor.[61]

While following established common law tort rules, the Stratton Oakmont and Cubby cases presented internet platforms with a difficult choice: voluntarily moderate unlawful or obscene content and thereby become liable for all messages on their bulletin boards, or do nothing and allow unlawful and obscene content to cover their bulletin boards unfiltered. In litigation, Prodigy claimed that the "sheer volume" of message board postings it received—by our current standards a humble "60,000 a day"—made manually reviewing every message impossible. If forced to choose between taking responsibility for all messages and deleting no messages at all, it would take the latter course.[62] Thus, given the technological differences between an internet platform and a bookstore or library, the former's ability to aggregate a much greater volume of information, traditional liability rules became strained. Tort law risked dis-incentivizing platforms from editing or moderating any content for fear they would become liable for all third-party content.

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[58] Smolla § 4:92.
[59] Restatement (Second) of Torts § 581(1) (1977).
[60] Prosser, supra note 54, § 113 at 803.
[61] Stratton Oakmont, 1995 WL 323710 at *2-3.
[62] Stratton Oakmont, 1995 WL 323710 at *3.

Congress intended section 230 to address this difficult liability problem, but nothing in the law's history, purpose or text allows for the conclusion that internet platforms should avoid all responsibility for their own editing and content-moderating decisions. Indeed, section 230 was originally titled the "Online Family Empowerment" amendment to the Communications Decency Act, which was titled, "protection for private blocking and screening of offensive material." [63] Responding to pornography and obscene material on the web, Congress designed section 230 to encourage platforms to moderate specific types of content, mostly related to sexual material inappropriate to minors. Congress did not intend a vehicle to absolve internet and social media platforms—which, in the age of dial-up internet bulletin boards, such as Prodigy, did not exist—from all liability for their editorial decisions.

Representatives Christopher Cox and Ron Wyden floated the bill that became section 230 as an alternative to Senator J. James Exon's bill that criminalized the transmission of indecent material to minors.[64] In public comments, Representative Cox explained that the section 230 would reverse Stratton Oakmont and advance the regulatory goal of allowing families greater power to control online content.[65] The final statute reflected his stated policy: "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

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[63] Telecommunications Act of 1996, Pub. L. No. 104-104, title V, Sec. 509 (1996).
[64] Robert Cannon, The Legislative History of Senator Exon's Communications Decency Act: Regulating Barbarians on the Information Superhighway, 49 Fed. Comm. L.J. 51 (1996); Felix T. Wu, Collateral Censorship and the Limits of Intermediary Immunity, 87 Notre Dame L. Rev. 293, 316 (2011); 141 Cong. Rec. H8468-69 (daily ed. Aug. 4, 1995); Ashcroft v. Am. Civil Liberties Union, 535 U.S. 564, 564 (2002) ("[T]he Communications Decency Act reflected Congress's response to the proliferation of pornographic, violent and indecent content on the web Congress' first attempt to protect children from exposure to pornographic material on the Internet.").
[65] See 141 Cong. Rec. H8469-70 (daily ed. Aug. 4, 1995) (statement of Rep. Cox).

services."[66] The comments in the Congressional record from supporting congressmen and women—and it received strong bi-partisan support—reveal an understanding that the Online Family Empowerment amendment, now codified as section 230, as a non-regulatory approach to protecting children from pornography,[67] intended to provide incentives for "Good Samaritan" blocking and screening of offensive material.

C. Section 230(c)'s Structure

To further these goals, Congress drafted the "Good Samaritan" exception to publisher liability. Section 230(c)(1) has a specific focus: it prohibits "treating" "interactive computer services," i.e., internet platforms, such as Twitter or Facebook, as "publishers." But, this provision only concerns "information" provided by third parties, i.e., "another internet content provider"[68] and does not cover a platform's own content or editorial decisions.

The text of section 230(c)(1) states:

(c) Protection for "Good Samaritan" blocking and screening of offensive material:

(1) Treatment of publisher or speaker

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[66] 47 U.S.C. § 230(b)(3).

[67] See 141 Cong. Rec. H8470 (1995) (statement of Rep. White) ("I want to be sure we can protect [children] from the wrong influences on the Internet. But . . . the last person I want making that decision is the Federal Government. In my district right now there are people developing technology that will allow a parent to sit down and program the Internet to provide just the kind of materials that they want their child to see. That is where this responsibility should be, in the hands of the parent. That is why I was proud to cosponsor this bill that is what this bill does . . . ."); id., (statement of Rep. Lofgren) ("[The Senate approach] will not work. It is a misunderstanding of the technology. The private sector is out giving parents the tools that they have. I am so excited that there is more coming on. I very much endorse the Cox-Wyden amendment . . . .").

[68] 47 U.S.C. § 230(c)(1).

> No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

Section (c)(2) also has a specific focus: it eliminates liability for interactive computer services that act 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."[69]

Subsection (c)(2) governs the degree to which some of the platform's own content moderation decisions receive any legal protection, stating:

> "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 . . . ."

Here, Congress protects "any action . . . taken in good faith to restrict access to or availability of material." This means any social media platform's editorial judgment, moderation, content editing or deletion receives legal immunity, but the plain words of the provision indicate that this protection only covers decisions to restrict access to certain types of enumerated content. As discussed infra, these categories are quite limited and refer primarily to traditional areas of media regulation—also consistent with legislative history's concern that private regulation could create family-friendly internet spaces—and only actions within these categories taken in "good faith."

[69] 47 U.S.C. § 230(c)(2).

D. Expansive Court Rulings Tied to Early Platforms and Outdated Technology

Courts have recognized that "Congress enacted this provision for two basic policy reasons: to promote the free exchange of information and ideas over the Internet and to encourage voluntary monitoring for offensive or obscene material."[70] Congress intended sections 230(c)(1) and (c)(2) to protect platform openness and monitoring for certain specific issues. But, as discussed infra, ambiguous language in these statutes allowed some courts to broadly expand section 230's immunity from beyond its original purpose into a bar any legal action or claim that involves even tangentially "editorial judgment."[71] These subsequent protections established from "speaker or publisher" are overly broad and expansive, and often have absolutely nothing to do with the original harm section 230 was meant to remedy: relieving platforms of the burden of reading millions of messages to detect for defamation as Stratton Oakmont would require. Far and above initially intended viewer protection, courts have ruled section 230(c)(1) offers immunity from contracts,[72] consumer fraud,[73] revenge pornography,[74]

[70] Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1122 (9th Cir. 2003).
[71] See, e.g., Sikhs for Justice "SFJ", Inc. v. Facebook, Inc., 144 F.Supp.3d 1088, 1094–1095 (N.D.Cal. 2015).
[72] Caraccioli v. Facebook, Inc., 167 F. Supp.3d 1056, 1064-66 (N.D. Cal. 2016) (dismissing breach of contract claim and Cal. Bus. & Prof. Code § 17200 unfair practices claim); Lancaster v. Alphabet Inc., No. 2016 WL 3648608, at *5 (N.D. Cal. July 8, 2016) (dismissing claim for breach of covenant of good faith and fair dealing); Jurin v. Google, Inc., 695 F. Supp. 2d 1117, 1122–23 (E.D. Cal. 2010) (dismissing claim for fraud); Fed. Agency of News LLC, et al. v. Facebook, Inc., 395 F. Supp. 3d 1295 (N.D. Cal. 2019) (dismissing discrimination claims under Title II and 42 U.S.C. § 1983); Obado v. Magedson, 43 Media L. Rep. 1737 (D.N.J. 2014) (dismissing claim for promissory estoppel), aff'd, 612 F. App'x 90 (3d Cir. 2015).
[73] See Gentry v. eBay, Inc., 121 Cal. Rptr. 2d 703 (Cal. Ct. App. 2002); Hinton v. Amazon, 72 F. Supp. 3d 685, 687 (S. D. Miss. 2014); Oberdorf v. Amazon, 295 F. Supp. 3d 496 (Mid. D. PA Dec. 21, 2017).
[74] Jones v. Dirty World Entertainment Holding LLC, 755 F.3d 398 (6th Cir. 2014); S.C. v. Dirty World LLC, 40 Media L. Rep. 2043 (W.D. Mo. 2012); Poole v. Tumblr, Inc., 404 F. Supp. 3d 637 (D. Conn. 2019).

anti-discrimination civil rights obligations,[75] and even assisting in terrorism.[76] By expanding protections beyond defamation, these courts extend to platforms a privilege to ignore laws that every other communications medium and business must follow and that are no more costly or difficult for internet platforms to follow than any other business.

The problem of overly expansive interpretations for section 230 is not merely hypothetical. Tens of thousands of Americans have reported, among other troubling behaviors, online platforms "flagging" content as inappropriate, even though it does not violate any stated terms of service; making unannounced and unexplained changes to company policies that have the effect of disfavoring certain viewpoints; and deleting content and entire accounts with no warning, no rationale, and no recourse. As FCC Commissioner Brendan Carr has observed, social media such as Twitter "punis[h] speakers based on whether it approves or disapproves of their politics."[77] One can hardly imagine a result more contrary to Congress's intent to preserve on the internet "a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity."[78]

Further, by making contract and consumer fraud claims concerning moderation unenforceable under section 230, courts seriously injure section 230's goal "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services."[79] Content moderation policies become, as FCC Commissioner Brendan

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[75] Sikhs for Justice "SFJ", Inc., 144 F. Supp.3d 1088, 1094-1095.
[76] Force, 934 F.3d at 57.
[77] Jon Brokin, Arstechnica, FCC Republican excitedly endorses Trump's crackdown on social media, May 29, 2020, https://arstechnica.com/tech-policy/2020/05/fcc-republican-excitedly-endorses-trumps-crackdown-on-social-media/.
[78] 47 U.S.C. § 230(a)(1).
[79] 47 U.S.C. § 230(b)(2).

Carr recently described Twitter's moderation policy, "free speech for me, but not for thee." [80] Further, if interactive computer services' contractual representations about their own services cannot be enforced, interactive computer services cannot distinguish themselves. Consumers will not believe, nor should they believe, representations about online services. Thus, no service can credibly claim to offer different services, further strengthening entry barriers and exacerbating competition concerns.

Much of this overly expansive reading of section 230 rests on a selective focus on certain language from Zeran, a case from the United States of Appeals for the Fourth Circuit.[81] The line of court decisions expanding section 230 in such extravagant ways relies on Zeran's reference to: "lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred."[82] This language arguably provides full and complete immunity to the platforms for their own publications, editorial decisions, content-moderating, and affixing of warning or fact-checking statements.[83] But, it is an erroneous interpretation, plucked from its surrounding context and thus removed from its more accurate meaning.

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[80] News Break, Brendan Carr Decries Twitter Censorship as 'Free Speech for Me, but Not for Thee, June 11, 2020, https://www.newsbreak.com/news/1582183608723/brendan-carr-decries-twitter-censorship-as-free-speech-for-me-but-not-for-thee.

[81] Zeran, 129 F.3d at 327.

[82] Zeran, 129 F.3d at 330.

[83] These lines from Zeran have led some courts to adopt the so-called three part section 230(c)(1) test: (1) whether Defendant is a provider of an interactive computer service; (2) if the postings at issue are information provided by another information content provider; and (3) whether Plaintiff's claims seek to treat Defendant as a publisher or speaker of third party content. Okeke v. Cars.com, 966 N.Y.S.2d 843, 846 (Civ. Ct. 2013), citing Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 564 F. Supp. 2d 544, 548 (E.D. Va. 2008), aff'd, 591 F.3d 250 (4th Cir. 2009). As the text explains, this so-called test errs in the third prong. The question is not whether the claim treats defendant as a publisher or speaker—after all, virtually every legal claim (contract, fraud, civil rights violations) would do so. The question is whether liability is

In fact, the quotation refers to third party's exercise of traditional editorial function—not those of the platforms. As the sentence in Zeran that is immediately prior shows, section 230 "creates a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service." In other words, the liability from which section 230(c)(1) protects platforms is that arising from the content that the third-party posts—i.e. the "information" posted by "another information provider" and those information providers' editorial judgments.

In light of the history of publisher and distributor liability law upon which section 230 draws, as well as its actual text, the best way to interpret the distinction between section 230(c)(1) and (c)(2) is as follows: Section 230(c)(1) applies to acts of omission—to a platform's failure to remove certain content. In contrast, section 230(c)(2) applies to acts of commission—a platform's decisions to remove. Section 230(c)(1) does not give complete immunity to all a platform's "editorial judgments."

E. Need for FCC Regulations: Ambiguities in Section 230

Section 230 contains a number of ambiguities that courts have interpreted broadly in ways that are harmful to American consumers, free speech, and the original objective of the statute. First, as discussed below, uncertainty about the interplay between section 230(c)(1) and (c)(2) has led many courts to a construction of the two provisions that other courts consider to be anomalous or lead to rendering section 230(c)(2) superfluous. Second, the interplay between section 230(c)(1) and (c)(2) does not make clear at what point a platform's moderation and presentation of content becomes so pervasive that it becomes an information content provider

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based on the content of third-party information. Requiring platforms to monitor the content of thousands of posts was the impetus behind section 230.

and, therefore, outside of section 230(c)(1)'s protections. Third, critical phrases in section 230(c)(2)— the "otherwise objectionable" material that interactive computer service providers may block without civil liability; and the "good faith" precondition for activating that immunity—are ambiguous on their face. And, with respect to the former, courts have posited starkly divergent interpretations that can only create uncertainty for consumers and market participants. Finally, what it means to be an "information content provider" or to be "treated as a publisher or speaker" is not clear in light of today's new technology and business practices. The Commission's expertise makes it well equipped to address and remedy section 230's ambiguities and provider greater clarity for courts, platforms, and users.

1. The Interaction Between Subparagraphs (c)(1) and (c)(2)

Ambiguity in the relationship between subparagraphs (c)(1) and (c)(2) has resulted in courts reading section 230(c)(1) in an expansive way that risks rendering (c)(2) a nullity. Numerous district court cases have held that section 230(c)(1) applies to removals of content, not section 230(b)(2) with its exacting "good faith" standard."[84] For instance, in Domen v. Vimeo, a federal district court upheld the removal of videos posted by a religious groups' questioning a California law's prohibition on so-called sexual orientation change efforts (SOCE), and the law's effect on pastoral counseling. Finding the videos were "harassing," the court upheld their removal under both section 230(c)(1) and section (c)(2), ruling that these sections are co-extensive, rather than aimed at very different issues.[85] In doing so, the court rendered section

[84] Domen v. Vimeo, Inc., 433 F. Supp. 3d 592, 601 (S.D.N.Y. 2020); Lancaster v. Alphabet, Inc., 2016 WL 3648608 (N.D. Cal. July 28, 2016); Sikhs for Justice "SFJ", Inc., 144 F.Supp.3d 1088.
[85] Domen, 433 F. Supp. 3d at 601 ("the Court finds that Vimeo is entitled to immunity under either (c)(1) or (c)(2)").

230(c)(2) superfluous—reading its regulation of content removal as completely covered by section 230(c)(1)'s regulation of liability for user-generated third party content.

The Commission should promulgate a regulation to clarify the relationship between the two provisions so that section 230(c)(1) does not render section 230(c)(1) superfluous. To determine how these subparagraphs interact—or as E.O. 13925 specifically instructs: "to clarify and determine the circumstances under which a provider of an interactive computer service that restricts access to content in a manner not specifically protected by subparagraph (c)(2)(A) may also not be able to claim protection under subparagraph (c)(1),"[86] the FCC should determine whether the two subsections' scope is additive or not. While some courts have read section 230(c)(1) "broadly,"[87] few have provided any principled distinction between the two subsections.

NTIA urges the FCC to follow the canon against surplusage in any proposed rule.[88] Explaining this canon, the Supreme Court holds, "[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . . ."[89] The Court emphasizes that the canon "is strongest when an interpretation would render superfluous another part of the same statutory scheme."[90]

While some district courts, such as Domen discussed above, have ruled that section 230(c)(1) applies to content removal, which is section 230(c)(2)'s proper domain, those courts

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[86] E.O. 13925 § 2(b)(i).
[87] See Force, 934 F.3d at 64.
[88] Marx v. General Revenue Corp., 568 U.S. 371, 385 (2013).
[89] Corley v. United States, 556 U.S. 303, 314 (2009), quoting Hibbs v. Winn, 542 U.S. 88, 101 (2004).
[90] Marx, 568 U.S. at 386; see also Fair Hous. Council, 521 F.3d 1157 at 1167-68 (avoiding superfluity in interpret the "developer" exception in Section 230(f)(3) of the CDA).

that have explicitly inquired into the proper relationship between the two subparagraphs have followed the surplusage canon—ruling that the provisions cover separate issues[91] and "address different concerns."[92] "Section 230(c)(1) is concerned with liability arising from information provided online," while "[s]ection 230(c)(2) is directed at actions taken by Internet service providers or users to restrict access to online information."[93] Thus, "[s]ection 230(c)(1) provides immunity from claims by those offended by an online publication, while section 230(c)(2) protects against claims by those who might object to the restriction of access to an online publication."[94] Courts have refused to "interpret[] the CDA . . . [to allow] the general immunity in (c)(1) [to] swallow[] the more specific immunity in (c)(2)" because subsection (c)(2) immunizes only an interactive computer service's "actions taken in good faith."[95]

NTIA suggests that the FCC can clarify this relationship between section 230(c)(1) and section 230(c)(2) by establishing the following points. First, the FCC should make clear that section 230(c)(1) applies to liability directly stemming from the information provided by third-party users. Section 230(c)(1) does not immunize a platforms' own speech, its own editorial decisions or comments, or its decisions to restrict access to content or its bar user from a platform. Second, section 230(c)(2) covers decisions to restrict content or remove users.

NTIA, therefore, requests that the Federal Communications Commission add the below Subpart E to 47 CFR Chapter I:

> **Subpart E. Interpreting Subsection 230(c)(1) and Its Interaction With Subsection 230(c)(2).**

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[91] See, e.g., Zango, 568 F.3d at 1175 (holding that (c)(2) is a "different . . . statutory provision with a different aim" than (c)(1)).
[92] Barrett, 40 Cal. 4th 33.
[93] Id. at 49 (emphasis added).
[94] Id. (emphasis added).
[95] e-ventures Worldwide, LLC v. Google, Inc., (M.D. Fla. Feb. 8, 2017) 2017 U.S. Dist. LEXIS 88650, at *9.

§ 130.01
As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

(a) 47 U.S.C. 230(c)(1) applies to an interactive computer service for claims arising from failure to remove information provided by another information content provider. Section 230(c)(1) has no application to any interactive computer service's decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service. Any applicable immunity for matters described in the immediately preceding sentence shall be provided solely by 47 U.S.C. § 230(c)(2).

(b) An interactive computer service is not a publisher or speaker of information provided by another information content provider solely on account of actions voluntarily taken in good faith to restrict access to or availability of specific material in accordance with subsection (c)(2)(A) or consistent with its terms of service or use.

2. The Meaning of Section 230(c)(2)

Section 230(c)(2)'s ambiguities include (1) how to interpret "otherwise objectionable" and (2) "good faith."

a. "Otherwise objectionable"

If "otherwise objectionable" means any material that any platform "considers" objectionable, then section 230(b)(2) offers de facto immunity to all decisions to censor content. And some district courts have so construed section 230(c)(2).[96] But, many courts recognize

[96] Domen v. Vimeo, Inc., 2020 U.S. Dist. L 7935 (S.D.N.Y. Jan. 15, 2020), appeal filed No 20-616 (Feb. 18, 2020) ("Section 230(c)(2) is focused upon the provider's subjective intent of what is 'obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable.' That section 'does not require that the material actually be objectionable; rather, it affords protection for blocking material "that the provider or user considers to be' objectionable."'); Langdon v. Google, Inc., 474 F. Supp. 2d 622, 631 (D. Del. 2007) ("Plaintiff argues there was no refusal to run his ads on the basis they were obscene or harassing, and that Defendants cannot create 'purported reasons for not running his ads.' He omits, however, reference to that portion of § 230 which provides immunity from suit for restricting material that is 'otherwise objectionable.'").

limiting principles. Many look to the statutory canon of ejusdem generis, which holds that catch-all phases at the end of a statutory lists should be construed in light of the other phrases.[97] In this light, section 230(c)(2) only applies to obscene, violent, or other disturbing matters.[98]

Understanding how the section 230(c)(2) litany of terms has proved difficult for courts in determining how spam filtering and filtering for various types of malware fits into the statutory framework. Most courts have ruled that "restrict[ing] access" to spam falls within the section

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[97] Washington State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler, 537 U.S. 371, 372 (2003) ("under the established interpretative canons of noscitur a sociis and ejusdem generis, where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar to those enumerated by the specific words").

[98] Darnaa, LLC v. Google, Inc., 2016 WL 6540452 at *8 (N.D. Cal. 2016) ("The context of § 230(c)(2) appears to limit the term to that which the provider or user considers sexually offensive, violent, or harassing in content."); Song Fi, Inc. v. Google, Inc., 108 F. Supp. 3d 876, 883 (N.D. Cal. 2015) ("First, when a statute provides a list of examples followed by a catchall term (or 'residual clause') like 'otherwise objectionable,' the preceding list provides a clue as to what the drafters intended the catchall provision to mean," citing Circuit City Stores v. Adams, 532 U.S. 105, 115 (2001)). This is the rationale for the canon of construction known as eiusdem generis (often misspelled ejusdem generis), which is Latin for 'of the same kind); National Numismatic v. eBay, 2008 U.S. Dist. LEXIS 109793, at *25 (M.D. Fla. Jul. 8, 2008) ("Section 230 is captioned 'Protection for 'Good Samaritan' blocking and screening of offensive material,' yet another indication that Congress was focused on potentially offensive materials, not simply any materials undesirable to a content provider or user"); Sherman v. Yahoo! Inc., 997 F. Supp. 2d 1129 (S.D. Cal. 2014) (text messages allegedly violate Telephone Consumer Protection Act; Yahoo! raised section 230(c)(2)(B) as a defense) ("The Court declines to broadly interpret 'otherwise objectionable' material to include any or all information or content. The Ninth Circuit has expressed caution at adopting an expansive interpretation of this provision where providers of blocking software 'might abuse th[e CDA] immunity to block content for anticompetitive purposes or merely at its malicious whim, under the cover of considering such material "otherwise objectionable" under § 230(c)(2)."); Goddard v. Google, Inc., 2008 U.S. Dist. LEXIS 101890 (N.D. Cal. Dec. 17, 2008) ('[i]t is difficult to accept . . . that Congress intended the general term "objectionable" to encompass an auction of potentially-counterfeit coins when the word is preceded by seven other words that describe pornography, graphic violence, obscenity, and harassment.' In the instant case, the relevant portions of Google's Content Policy require that MSSPs provide pricing and cancellation information regarding their services. These requirements relate to business norms of fair play and transparency and are beyond the scope of § 230(c)(2).").

230(c)(2) framework, although that is difficult perhaps to see as a textual matter.[99] Spam, though irritating and destructive of the online experience, does not fit clearly into the litany in section 230, at least as courts have understood this litany.

The spam cases have prompted courts to examine the thread that runs through the list in section 230. A recent Ninth Circuit case perceptively sees the challenge: On one hand, "decisions recognizing limitations in the scope of immunity [are] persuasive,"[100] and "interpreting the statute to give providers unbridled discretion to block online content would . . . enable and potentially motivate internet-service providers to act for their own, and not the public, benefit."[101] In addition, the court did recognize that "the specific categories listed in § 230(c)(2) vary greatly: [m]aterial that is lewd or lascivious is not necessarily similar to material that is violent, or material that is harassing. If the enumerated categories are not similar, they provide little or no assistance in interpreting the more general category. We have previously recognized this concept."[102]

Yet, in fact, the original purpose of the Communications Decency Act—"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

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[99] Asurvio LP v. Malwarebytes Inc., 2020 U.S. Dist. LEXIS 53906 (N.D. Cal. Mar. 26, 2020) (allegation that M is wrongfully classifying A's software as malware); 4PC Drivers Headquarters, LP v. Malwarebytes Inc., 371 F. Supp. 3d 652 (N.D. Cal. 2019) (malware); Shulman v. FACEBOOK.com, 2018 U.S. Dist. LEXIS 113076 (D.D.C. Jul. 9, 2018) (spam); Holomaxx Technologies v. Microsoft Corp., 783 F. Supp. 2d 1097 (N.D. Cal. 2011) (spam); Smith v. Trusted Universal Stds. in Elec. Transactions, Inc., 2010 U.S. Dist. LEXIS 43360 (D. N.J. May 4, 2010) (deletion of spam); e360insight v. Comcast Corp., 546 F. Supp. 2d 605 (N.D. Ill. 2008) (spam); Zango v. Kapersky Lab., 568 F.3d 1169 (9th Cir. 2009) (competitive blocking software).

[100] Enigma Software Grp. USA, v. Malwarebytes, Inc., 946 F.3d 1040, 1050 (9th Cir. 2019).

[101] Id.

[102] Id. at 1051.

material"[103]—suggests that the thread that combines section 230(c)(2)'s concepts are those materials that were objectionable in 1996 and for which there was already regulation—regulation which Congress intended section 230 to provide incentives for free markets to emulate.

The first four adjectives in subsection (c)(2), "obscene, lewd, lascivious, filthy," are found in the Comstock Act as amended in 1909.[104] The Comstock Act prohibited the mailing of "every obscene, lewd, or lascivious, and every filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character."[105] In addition, the CDA used the terms "obscene or indecent," prohibiting the transmission of "obscene or indecent message."[106] The Act's second provision declared unconstitutional in Reno v. ACLU, section 223(d), prohibits the knowing sending or displaying of "any comment, request, suggestion, proposal, image, or other communication that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs, regardless of whether the user of such service placed the call or initiated the communication."[107] This language of "patently offensive . . ." derives from the definition of indecent speech set forth in the Pacifica decision and which the FCC continues to regulate to this day.[108]

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[103] 47 U.S.C. § 230(a)(4).
[104] Section 3893 of the Revised Statutes made by section 211 of the Criminal Code, Act of March 4, 1909, c. 321, 35 Stat. 1088, 1129; United States v. Limehouse, 285 U.S. 424, 425 (1932) (stating that "Section 211 of the Criminal Code (18 USCA § 334) declares unmailable 'every obscene, lewd, or lascivious, and every filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character") (additional citation added). The phrase is repeated in numerous state statutes.
[105] Id. at 424-6.
[106] 47 U.S. § 223(a) (May 1996 Supp.).
[107] 521 U.S. 844 (1997).
[108] FCC v. Pacifica Found., 438 U.S. 726, 732 (1978) ("patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs").

The next two terms in the list "excessively violent" and "harassing" also refer to typical concerns of communications regulation which were, in fact, stated concerns of the CDA itself. Congress and the FCC have long been concerned about the effect of violent television shows, particularly upon children; indeed, concern about violence in media was an impetus of the passage of the Telecommunications Act of 1996, of which the CDA is a part. Section 551 of the Act, entitled Parental Choice in Television Programming, requires televisions over a certain size to contain a device, later known at the V-chip. This device allows viewers to block programming according to an established rating system.[109] The legislation led to ratings for broadcast television that consisted of violent programming.[110] The FCC then used this authority to require televisions to allow blocking technology.[111]

And, of course, Congress and the FCC have long regulated harassing wire communications. Section 223, Title 47, the provision which the CDA amended and into which the CDA was in part codified, is a statute that prohibits the making of "obscene or harassing"

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[109] 47 U.S.C. § 303(x). See Technology Requirements to Enable Blocking of Video Programming Based on Program Ratings, 63 Fed. Reg. 20, 131 (Apr. 23, 1998) ("[T]he Commission is amending the rules to require . . . technological features to allow parents to block the display of violent , sexual, or other programming they believe is harmful to their children. These features are commonly referred to as 'v-chip' technology."). Finding that "[t]here is a compelling governmental interest in empowering parents to limit the negative influences of video programming that is harmful to children," Congress sought to "provid[e] parents with timely information about the nature of upcoming video programming and with the technological tools" to block undesirable programming by passing the Telecommunications Act of 1996 (the "Telecommunications Act").

[110] FCC News, Commission Finds Industry Video Programming Rating System Acceptable, Report No. GN 98-3 (Mar. 12, 1998), available at https://transition.fcc.gov/Bureaus/Cable/News_Releases/1998/nrcb8003.html.

[111] Amy Fitzgerald Ryan, Don't Touch That V-Chip: A Constitutional Defense of the Television Program Rating Provisions of the Telecommunications Act of 1996, 87 Geo. L.J. 823, 825 (1999), citing Lawrie Mifflin, TV Networks Plan Ratings System, Orange County Reg., Feb. 15, 1996, at A1.

telecommunications.[112] These harassing calls include "mak[ing] or caus[ing] the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number" or "mak[ing] repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication."[113] Roughly half of the States also outlaw "harassing" wire communications via telephone.[114] Congress enacted the Telephone Consumer Protection Act (TCPA), recently upheld in most part by the Supreme Court,[115] to ban "automated or prerecorded telephone calls, regardless of the content or the initiator of the message," that are considered "to be a nuisance and an invasion of privacy."[116]

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[112] 47 U.S.C. § 223.

[113] 47 U.S.C. § 223(a)(1)(D) & (E) (2012).

[114] See, e.g., (Arizona) Ariz. Rev. Stat. § 13-2916 ("It is unlawful for any person, with intent to terrify, intimidate, threaten or harass a specific person or persons, to do any of the following: 3. Otherwise disturb by repeated anonymous, unwanted or unsolicited electronic communications the peace, quiet or right of privacy of the person at the place where the communications were received."); (California) Cal. Pen. Code § 653m(b) ("Every person who, with intent to annoy or harass, makes repeated telephone calls or makes repeated contact by means of an electronic communication device, or makes any combination of calls or contact, to another person is, whether or not conversation ensues from making the telephone call or contact by means of an electronic communication device, guilty of a misdemeanor. Nothing in this subdivision shall apply to telephone calls or electronic contacts made in good faith or during the ordinary course and scope of business."); (Maryland) Md. Code Ann., Crim. Law § 3-804 ("A person may not use telephone facilities or equipment to make: (1) an anonymous call that is reasonably expected to annoy, abuse, torment, harass, or embarrass another; (2) repeated calls with the intent to annoy, abuse, torment, harass, or embarrass another"); (Oklahoma) 21 Okl. St. § 1172 ("It shall be unlawful for a person who, by means of a telecommunication or other electronic communication device, willfully either: 6. In conspiracy or concerted action with other persons, makes repeated calls or electronic communications or simultaneous calls or electronic communications solely to harass any person at the called number(s)").

[115] Barr v. Am. Ass'n of Political Consultants, 140 S. Ct. 2335 (2020) (upholding the Act except for its debt-collection exception).

[116] Telephone Consumer Protection Act of 1991, 105 Stat. 2394, 2395, codified at 15 U.S.C. § 6101.

Thus, the cases that struggled over how to fit spam into the list of section 230(c)(2) could simply have analogized spam as similar to harassing or nuisance phone calls.

The regulatory meanings, as understood in 1996 and used in the Communications Decency Act, itself, constitute the thread that unites the meanings of "obscene, lewd, lascivious, filthy, excessively violent, and harassing." All deal with issues involving media and communications content regulation intended to create safe, family environments. Compelling that conclusion is "the presumption of consistent usage—the rule of thumb that a term generally means the same thing each time it is used . . . [particularly for] terms appearing in the same enactment."[117] To ensure clear and consistent interpretations of the terms used in subsection 230(c)(2), NTIA requests, therefore, that the FCC add the below Subpart E to 47 CFR Chapter I:

> **Subpart E. Clarifying Subsection 230(c)(2).**
> § 130.02
> As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:
>
> **(a) "obscene," "lewd," "lascivious," and "filthy"**
> The terms "obscene," "lewd," "lascivious," and "filthy" mean material that:
> i. taken as a whole, appeals to the prurient interest in sex or portrays sexual conduct in a patently offensive way, and which, taken as a whole, does not have serious literary, artistic, political, or scientific value;
> ii. depicts or describes sexual or excretory organs or activities in terms patently offensive as measured by contemporary community standards; to the average person, applying contemporary community standards; or
> iii. signifies the form of immorality which has relation to sexual impurity, and have the same meaning as is given them at common law in prosecutions for obscene libel.
>
> **(b) "excessively violent"**
> The term "excessively violent" means material that:
> i. is likely to be deemed violent and for mature audiences according the Federal Communications Commission's V-chip regulatory regime and TV Parental Guidance, promulgated pursuant to Section 551 of the 1996

[117] United States v. Castleman, 572 U.S. 157, 174 (2014), citing IBP, Inc. v. Alvarez, 546 U.S. 21, 33–34 (2005) (Scalia, J., conc.).

Telecommunications Act, Pub. L. No. 104-104, § 551, 110 Stat. 139-42 (codified at 47 U.S.C. § 303; § 330(c)(4)); or

ii. constitutes or intends to advocate domestic terrorism or international terrorism, each as defined in 18 U.S.C. § 2331 ("terrorism").

(c) "harassing"

The term "harassing" means any material that:

i. that sent by an information content provider that has the subjective intent to abuse, threaten, or harass any specific person and is lacking in any serious literary, artistic, political, or scientific value;

ii. regulated by the CAN-SPAM Act of 2003, 117 Stat. 2699; or

iii. that is malicious computer code intended (whether or not by the immediate disseminator) to damage or interfere with the operation of a computer.

(d) "otherwise objectionable"

The term "otherwise objectionable" means any material that is similar in type to obscene, lewd, lascivious, filthy, excessively violent, or harassing materials.

b. "Good faith"

The phrase "good faith" in section 230(c) is also ambiguous. On one hand, most courts, in interpreting the phrase, have looked to pretext, dishonesty, or refusing to explain wrongful behavior when finding good faith or lack thereof in the removal of content. As the United States Court of Appeals for the Ninth Circuit explains, "unless § 230(c)(2)(B) imposes some good faith limitation on what a blocking software provider can consider 'otherwise objectionable' . . . immunity might stretch to cover conduct Congress very likely did not intend to immunize." Under the generous coverage of section 230(c)(2)(B)'s immunity language, a blocking software provider might abuse that immunity to block content for anticompetitive purposes or merely at its malicious whim, under the cover of considering such material "otherwise objectionable."[118] At the same time, some courts, focusing the words "the provider or user considers to be

[118] Zango, 568 F.3d at 1178 (Fisher, J., concurring). The Ninth Circuit has adopted Judge Fisher's reasoning. See Enigma, 946 F.3d at 1049.

obscene," see the provision's immunity available whenever an interactive computer service simply claims to consider the material as fitting within the provision's categories. Thus, "good faith" simply means the existence of some "subjective intent."[119]

Good faith requires transparency about content moderation disputes processes. In order to qualify for section 230(c)(2)'s immunity, a social media platform, or any interactive computer service, must demonstrate in a transparent way that when it takes action pursuant to section 230(c)(2), it provides adequate notice, reasoned explanation, or a meaningful opportunity to be heard."[120]

To ensure clear and consistent interpretation of the "good faith" standard, NTIA requests that the FCC further add the below to newly requested 47 CFR Chapter I Subchapter E Section 130.02:

> **(e) "good faith"**
> A platform restricts access to or availability of specific material (including, without limitation, its scope or reach) by itself, any agent, or any unrelated party in "good faith" under 47 U.S.C. § (c)(2)(A) if it:
>
> i. restricts access to or availability of material or bars or refuses service to any person consistent with publicly available terms of service or use that state plainly and with particularity the criteria the interactive computer service employs in its content-moderation practices, including by any partially or fully automated processes, and that are in effect on the date such content is first posted;
> ii. has an objectively reasonable belief that the material falls within one of the listed categories set forth in 47 U.S.C. § 230(c)(2)(A);
> iii. does not restrict access to or availability of material on deceptive or pretextual grounds, and does not apply its terms of service or use to restrict access to or availability of material that is similarly situated to material that the interactive computer service intentionally declines to restrict; and
> iv. supplies the interactive computer service of the material with timely notice describing with particularity the interactive computer service's reasonable factual basis for the restriction of access and a meaningful opportunity to respond, unless the interactive computer service has an objectively

[119] Domen, 433 F.Supp. 3d 592.
[120] E.O. 13925, Sec. 2(b).

reasonable belief that the content is related to criminal activity or such notice would risk imminent physical harm to others.

3. Section 230(c)(1) and 230(f)(3)

Section 230(c)(1) places "information content providers," i.e., entities that create and post content, outside its protections. This means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the internet, does not receive the statute's shield. Numerous cases have found that interactive computer service's designs and policies render it an internet content provider, outside of section 230(c)(1)'s protection. But the point at which a platform's form and policies are so intertwined with users' postings so as to render the platform an "information content provider" is not clear.

Courts have proposed numerous interpretations, most influentially in the Ninth Circuit in Fair Housing Council of San Fernando Valley v. Roommates.Com.[121] There, the court found that "[b]y requiring subscribers to provide the information as a condition of accessing its service, and by providing a limited set of pre-populated answers, Roommate becomes much more than a passive transmitter of information."[122] The court continued, "[w]e interpret the term 'development' as referring not merely to augmenting the content generally, but to materially contributing to its alleged unlawfulness. In other words, a website helps to develop unlawful content, and thus falls within the exception to section 230, if it contributes materially to the alleged illegality of the conduct."[123] But, this definition has failed to provide clear guidance, with courts struggling to define "material contribution."[124]

[121] Fair Hous. Council, 521 F.3d at 1166.
[122] Id.
[123] Id. at 1167–68 (emphasis added); see also Dirty World Entertainment, 755 F.3d at 411.
[124] See, e.g., People v. Bollaert, 248 Cal. App. 4th 699, 717 (2016).

Further, not all courts accept the material contribution standard. The Seventh Circuit concludes that "[a] company can, however, be liable for creating and posting, inducing another to post, or otherwise actively participating in the posting of a defamatory statement in a forum that that company maintains."[125] Other circuits conclude that a website becomes an information content provider by "solicit[ing] requests" for the information and then "pa[ying] researchers to obtain it."[126]

This confusion stems from the difference between the way an online bulletin board worked in the 1990s, which simply posted content, and how social media works today. As Federal Trade Commissioner Rohit Chopra explained, new social media shape and control information and online experience often as an expression of platforms' and their advertisers' goals rather than their users':

> "[Section 230] seeks to foster an environment where information and ideas can flourish. If a company is just helping move information from point A to point B, that company is just like the mail carrier or the telegraph company. That makes sense . . . . But the tech market has dramatically shifted in the decades since this law was enacted . . . . I would argue that once platforms started prioritizing their paid predictions, the content became more a reflection of advertisers targeting users, than users' own preferences."[127]

In light of modern technology, the FCC should clarify the circumstances under which an interactive computer service becomes an information content provider. Interactive computer services that editorialize particular user comments by adding special responses or warnings appear to develop and create content in any normal use of the words. Analogously, district

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[125] Huon v. Denton, 841 F.3d 733, 742 (7th Cir. 2016).
[126] FTC v. Accusearch Inc., 570 F.3d 1187, 1199–1200 (10th Cir. 2009).
[127] Rohit Chopra, Tech Platforms, Content Creators, and Immunity, American Bar Association, Section of Antitrust Law Annual Spring Meeting, Washington, D.C. (Mar. 28, 2019) (transcript available online at https://www.ftc.gov/system/files/documents/public_statements/1510713/chopra_-_aba_spring_meeting_3-28-19_0.pdf (last visited June 15, 2020)).

courts have concluded that when interactive computer services' "employees . . . authored comments," the interactive computer services would become content providers.[128] In addition, prioritization of content under a variety of techniques, particularly when it appears to reflect a particularly viewpoint, might render an entire platform a vehicle for expression and thus an information content provider.

To clarify when interactive computer services become information content providers through developing and creating content through the presentation of user-provided material, NTIA requests that the FCC add the below Subpart E to 47 CFR Chapter I:

> **Subpart E. Clarifying Subsection 230(f)(2).**
> § 130.03
> As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:
>
> For purposes of 47 U.S.C. § 230(f)(3), "responsible, in whole or in part, for the creation or development of information" includes substantively contributing to, modifying, altering, presenting or prioritizing with a reasonably discernible viewpoint, commenting upon, or editorializing about content provided by another information content provider.

4. "Treated as a Publisher or Speaker"

Finally, the ambiguous term "treated as a publisher or speaker" is a fundamental question for interpreting that courts in general have not addressed squarely. One of the animating concerns for section 230 was court decisions holding online platforms liable as publishers for third-party speech, when in fact they were merely passive bulletin boards. By prohibiting an interactive computer service from being "treated" as a publisher or speaker, therefore, section 230 could be interpreted as not converting non-publisher platforms into publishers simply because they passively transmit third-party content. That does not, however, mean that the

[128] Huon, 841 F.3d at 742.

statute meant to immunize online platforms when they actually act as publishers and exert significant control over the third-party speech and the message it conveys.

FCC Chairman Pai made a similar point by asking if selective content moderation based on ideology eventually becomes "editorial judgment":

> Are these tech giants running impartial digital platforms over which they don't exercise editorial judgment when it comes to content? Or do they in fact decide what speech is allowed and what is not and discriminate based on ideology and/or political affiliation? [129]

If content-moderating can never, no matter how extreme or arbitrary, become editorializing that no longer remains the "speech of another," then section 230(c)(1) will subsume section 230(c)(2) and eliminate liability for all interactive computer services' decisions to restrict content. Interpreting "speaker or publisher" so broadly is especially harmful when platforms are opaque and deceptive in their content-monitoring policies.

This concern is hardly theoretical, given the highly inconsistent, baffling, and even ideologically driven content moderating decisions that the large interactive computer services have made, at least according to numerous accounts. For instance, one interactive computer service made the editorial decision to exclude legal content pertaining to firearms,[130] content that was deemed acceptable for broadcast television,[131] thereby chilling the speech of a political candidate supportive of gun rights. Another interactive computer service has suppressed the

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[129] Ajit Pai, What I Hope to Learn from the Tech Giants, FCC Blog (Sept. 4, 2018), https://www.fcc.gov/news-events/blog/2018/09/04/what-i-hope-learn-tech-giants.
[130] Facebook, Inc., Facebook Prohibited Content: 7. Weapons, Ammunition, or Explosives, https://www.facebook.com/policies/ads/prohibited_content/weapons (last visited June 15, 2020).
[131] Maria Schultz, Facebook pulls ad from gun-toting Georgia candidate taking on Antifa: 'Big Tech censorship of conservatives must end', Fox News (June 6, 2020), https://www.foxnews.com/politics/facebook-pulls-ad-from-gun-toting-georgia-candidate-big-tech-censorship-of-conservatives-must-end.

speech of an American politician for "glorifying violence"[132] while permitting that of a foreign politician glorifying violence to pass without action,[133] as publicly noted by the FCC Chairman.[134] Still another interactive computer service, purporting to be a document repository and editing service,[135] deleted a controversial paper about a potential therapy for COVID-19,[136] stating simply that it was in violation of the site terms of service.[137] A major food-workers' union has objected to social media-implemented internal communication networks for companies, or "intranets," implementing automated censorship to prevent discussions of unionization.[138]

At common law, as a general matter, one is liable for defamation only if one makes "an affirmative act of publication to a third party."[139] This "affirmative act requirement" ordinarily

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[132] Alex Hern, Twitter hides Donald Trump tweet for 'glorifying violence', The Guardian (May 29, 2020), https://www.theguardian.com/technology/2020/may/29/twitter-hides-donald-trump-tweet-glorifying-violence.
[133] White House official Twitter account (May 29, 2020), https://twitter.com/WhiteHouse/status/1266367168603721728.
[134] Ajit Pai verified Twitter account (May 29, 2020), https://twitter.com/AjitPaiFCC/status/1266368492258816002.
[135] Google, Inc., Google Docs "About" page, https://www.google.com/docs/about/ (last visited June 15, 2020) ("Google Docs brings your documents to life with smart editing and styling tools to help you easily format text and paragraphs. Choose from hundreds of fonts, add links, images, and drawings. All for free . . . . Access, create, and edit your documents wherever you go — from your phone, tablet, or computer — even when there's no connection.").
[136] Thomas R. Broker, et al., An Effective Treatment for Coronavirus (COVID-19), (Mar. 13, 2020), page archived at https://archive.is/BvzkY (last visited June 15, 2020).
[137] Google, Inc., Google Docs result for https://docs.google.com/document/d/e/2PACX-1vTi-g18ftNZUMRAj2SwRPodtscFio7bJ7GdNgbJAGbdfF67WuRJB3ZsidgpidB2eocFHAVjIL-7deJ7/pub (last visited June 15, 2020) ("We're sorry. You can't access this item because it is in violation of our Terms of Service.").
[138] United Food and Commercial Workers International Union, Facebook Censorship of Worker Efforts to Unionize Threatens Push to Strengthen Protections for Essential Workers During COVID-19 Pandemic (June 12, 2020), http://www.ufcw.org/2020/06/12/censorship/.
[139] Benjamin C. Zipursky, Online Defamation, Legal Concepts, and the Good Samaritan, 51 Val. U. L. Rev. 1, 18 (2016) , available at https://scholar.valpo.edu/cgi/viewcontent.cgi?article=2426&context=vulr.

"depict[s] the defendant as part of the initial making or publishing of a statement."[140] The common law also recognized a "narrow exception to the rule that there must be an affirmative act of publishing a statement."[141] A person "while not actually publishing—will be subjected to liability for the reputational injury that is attributable to the defendant's failure to remove a defamatory statement published by another person."[142] Such a duty might apply where a defendant has undertaken an affirmative duty to remove. Stratton Oakmont embodies the latter idea: The court held that Prodigy, having undertaken to moderate some content on its page, thereby assumed an affirmative duty to moderate all content on its site. At common law, then, the publication element of defamation could be satisfied either through the rule—an affirmative act—or the exception—an omission where an affirmative duty applies.

Section 230(c)(1)'s "treated as the publisher or speaker" could plausibly be understood to foreclose liability only if a defendant would satisfy the exception. Satisfying the exception subjects one to defamation liability as if he were the publisher or speaker of the content, although he did not "actually publish[]" the content.[143] He is not a "true publisher" in the sense of satisfying the affirmative act requirement, but he is deemed or regarded as if he were because he had an affirmative duty to moderate.[144] This interpretation of section 230(c)(1) reads it to foreclose the very argument courts may have been on track to embrace after Stratton Oakmont, viz., that a platform has an affirmative duty to remove defamatory content and will be treated as satisfying the publication element of defamation for nonfeasance in the same way as a true publisher. Section 230(c)(1) states—in the face of Stratton Oakmont's contrary holding—a

[140] Id. at 19.
[141] Id. at 20.
[142] Id. at 21 (citing Restatement (Second) of Torts § 577(2) (Am. Law Inst. 1977)).
[143] Zipursky, 51 Val. L. Rev. at 21.
[144] Id. at 45.

general rule: There is no affirmative duty to remove. For that reason, section 230(c)(1) should be construed to concern only failures to remove and not takedowns, and not to apply when a platform "actually publishes" content.

NTIA suggests that the FCC can clarify the ambiguous phrase "speaker or publisher" by establishing that section 230(c)(1) does not immunize the conduct of an interactive service provider that is actually acting as a publisher or speaker in the traditional sense. Two points follow. First, when a platform moderates outside of section 230(c)(2)(A), section 230(c)(1) does not provide an additional, broader immunity that shields content takedowns more generally. Such affirmative acts are outside of the scope of (c)(1). Second, when a platform reviews third-party content already displayed on the internet and affirmatively vouches for it, editorializes, recommends, or promotes such content on the basis of the content's substance or message, the platform receives no section 230(c)(1) immunity. NTIA therefore requests that the FCC further add the below to newly requested Subpart E to 47 CFR Chapter I:

Subpart E. Clarifying Subsection 230(f)(2).

§ 130.04

(c) An interactive computer service is not being "treated as the publisher or speaker of any information provided by another information content provider" when it actually publishes its own or third-party content. Circumstances in which an interactive computer service actually publishes content include when:

(i) it affirmatively solicits or selects to display information or content either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool pursuant to a reasonably discernible viewpoint or message, without having been prompted to, asked to, or searched for by the user; and
(ii) it reviews third-party content already displayed on the Internet and affirmatively vouches for, editorializes, recommends, or promotes such content to other Internet users on the basis of the content's substance or messages. This paragraph applies to a review conducted, and a recommendation made, either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool.

(d) An interactive computer service does not publish content merely by:

(i) providing content in a form or manner that the user chooses, such as non-chronological order, explicit user preferences, or because a default setting of the service provides it, and the interactive computer service fully informs the user of this default and allows its disabling; or

(ii) transmitting, displaying, or otherwise distributing such content, or merely by virtue of moderating third-party content consistent with a good faith application of its terms of service in force at the time content is first posted. Such an interactive computer service may not, by virtue of such conduct, be "treated as a publisher or speaker" of that third-party content. 47 U.S.C. § 230(c)(1).

VI. Title I and Sections 163 and 257 of the Act Permit the FCC to Impose Disclosure Requirements on Information Services

With roots in the Modified Final Judgment for the break-up of AT&T[145] and codified by the Telecommunications Act of 1996,[146] the term "information service" refers to making information available via telecommunications. Under FCC and judicial precedent, social media sites are "information services." As such, courts have long recognized the Commission's power to require disclosure of these services under sections 163 and 257.

A. Social media are information services

Section 230(f)(2) explicitly classifies "interactive computer services" as "information services," as defined in 47 U.S.C. § 153(20).[147] Further, social media fits the FCC's definition of

[145] United States v. Am. Tel. & Tel. Co., 552 F. Supp. 131, 179 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) (observing that "'Information services' are defined in the proposed decree at Section IV(J) as: the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information which may be conveyed via telecommunications").

[146] 47 U.S.C. § 153(24).

[147] Id. ("[T]he offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.").

enhanced services.[148] In Brand X, the Supreme Court explained, "The definitions of the terms 'telecommunications service' and 'information service' established by the 1996 Act are similar to the Computer II basic-and enhanced-service classifications" with "'information service'—the analog to enhanced service."[149]

Numerous courts have ruled that search engines, browsers and internet social media precursors such as chat rooms are information services.[150] Courts have long recognized edge providers as information services under Title I. For example, in Barnes, the U.S. Court of Appeals for the Ninth Circuit classifies Yahoo's social networking services an "information service," interchangeably with "interactive computer service," and in Howard v. Am. Online, the same court designates America Online's messaging facilities "enhanced services."[151]

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[148] 47 CFR § 64.702 ("[S]ervices, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information.").

[149] Nat'l Cable & Telecommunications Ass'n v. Brand X Internet Servs., 545 U.S. 967, 977 (2005).

[150] Mozilla Corp. v. F.C.C., 940 F.3d 1, 34 (D.C. Cir. 2019) ("But quite apart from the fact that the role of ISP-provided browsers and search engines appears very modest compared to that of DNS and caching in ISPs' overall provision of Internet access, Petitioners are in a weak posture to deny that inclusion of 'search engines and web browsers' could support an 'information service' designation . . . since those appear to be examples of the 'walled garden' services that Petitioners hold up as models of 'information service'-eligible offerings in their gloss of Brand X.") (internal citations omitted); FTC v. Am. eVoice, Ltd., 242 F. Supp. 3d 1119 (D. Mont. 2017) (Email and online "chat rooms" "were enhanced services because they utilized transmission lines to function, as opposed to acting as a pipeline for the transfer of information . . . . 'This conclusion is reasonable because e-mail fits the definition of an enhanced service.'" (quoting Howard v. Am. Online Inc., 208 F.3d 741, 746 (9th Cir. 2000)). "Also excluded from coverage are all information services, such as Internet service providers or services such as Prodigy and America-On-Line." H.R. Rep. No. 103-827, at 18 (1994), as reprinted in 1994 U.S.C.C.A.N. 3489, 3498

[151] Barnes, 570 F.3d at 1101.

B. Several statutory sections empower the FCC to mandate disclosure

Beyond having jurisdiction over social media as information services, the FCC has clear statutory authority to impose disclosure requirements under sections 163 and 257 of the Communications Act. Section 163 charges the FCC to "consider all forms of competition, including the effect of intermodal competition, facilities-based competition, and competition from new and emergent communications services, including the provision of content and communications using the Internet" and "assess whether laws, regulations, regulatory practices . . . pose a barrier to competitive entry into the communications marketplace or to the competitive expansion of existing providers of communications services."[152] Section 257(a) of the Communications Act requires the FCC to examine market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services."[153]

In its 2018 Internet Order, the Commission relied on section 257 to impose service transparency requirements on providers of the information service of broadband internet access. It reasoned that doing so would reduce entry barriers.[154] Similar reasoning applies to requiring transparency for social media. Clear, current, readily accessible and understandable descriptions of an interactive computer service provider's content moderation policies would help enterprising content providers fashion their offerings so that they can be provided across multiple

[152] 47 U.S.C. § 163.
[153] 47 U.S.C. § 257(a) (2018). While section 257 was amended and repealed in part, its authority remained intact in section 163. "Congress emphasized that '[n]othing in this title [the amendment to the Telecommunications Act creating section 163] or the amendments made by this title shall be construed to expand or contract the authority of the Commission." Mozilla, 940 F.3d at 47 citing Pub. L. No. 115-141, Div. P, § 403, 132 Stat. at 1090.
[154] Federal Communications Commission, In the Matter of Restoring Internet Freedom, 33 F.C.C. Rcd. 311 (2018).

platforms with reduced costs and friction for the provider and fewer disruptions to user experiences.[155]

Perhaps more important, information about an interactive computer service provider's content moderation policies would help entities design filtering products that could improve the providers' implementation of those policies, or assist consumers in remedying the gaps they may see in the providers' policies. Certainly, empowering consumers with blocking technologies that they choose and control—rather than accepting a platform's top-down centralized decisions, would directly advance section 230's policy of encouraging "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."[156] Increasing transparency about online platforms' content moderation practices would also enable users to make more informed choices about competitive alternatives.

Consumers today have a one-way relationship with social media transparency; platforms know everything about consumers, but consumers know very little about how or why platforms exercise influence or direct control over consumers' speech. Certain information disappears or becomes difficult to find, while other information is promoted and prominently displayed. Inevitably, some consumers and content creators begin to worry that secretive forces within platform providers are manipulating social media for ends that can only be guessed at.[157] Such suspicion is inevitable when there is so little transparency about the process behind the social media visibility of user-provided content, even when policies are applied fairly and no

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[155] See supra Section IV.
[156] 47 U.S.C. § 230(a)(3).
[157] Rod Dreher, Google Blacklists Conservative Websites (July 21, 2020), https://www.theamericanconservative.com/dreher/google-blacklists-conservative-websites/.

wrongdoing has taken place. By increasing transparency to consumers, platforms would ensure that consumers can choose to consume social media whose policies they agree with without fear that manipulations to which they did not consent are happening behind the scenes.

The importance of disclosure to our communications networks cannot be underestimated. Chairman Pai recognizes that democracies must require transparency and to ensure the proper function of essential communications networks.[158] That is why, when eliminating Title II common carrier so-called "network neutrality" regulations, Chairman Pai's FCC retained Title I disclosure requirements for broadband access service providers.

The same is true for other information service providers. Speaking of the social media platforms, FCC Chairman Ajit Pai asked "how do these companies make decisions about what we see and what we don't? And who makes those decisions?"[159] For social media, it is particularly important to ensure that large firms avoid "deceptive or pretextual actions stifling free and open debate by censoring certain viewpoints,"[160] or engage in deceptive or pretextual actions (often contrary to their stated terms of service) to stifle viewpoints with which they disagree."[161]

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[158] Federal Communications Commission, In the Matter of Restoring Internet Freedom, WC Docket No. 17-108, Declaratory Ruling, Report And Order, And Order (Jan, 4, 2018) ¶ 209, available at https://www.fcc.gov/document/fcc-releases-restoring-internet-freedom-order ("'Sunlight,' Justice Brandeis famously noted, 'is . . . the best of disinfectants.' This is the case in our domain. Properly tailored transparency disclosures provide valuable information to the Commission to enable it to meet its statutory obligation to observe the communications marketplace to monitor the introduction of new services and technologies, and to identify and eliminate potential marketplace barriers for the provision of information services. Such disclosures also provide valuable information to other Internet ecosystem participants.").

[159] Ajit Pai, What I Hope to Learn from the Tech Giants (Sept. 4, 2018), https://www.fcc.gov/news-events/blog/2018/09/04/what-i-hope-learn-tech-giants (last visited June 15, 2020).

[160] E.O. 13925, Section 2(a).

[161] Id.

To prevent these ends, NTIA requests that the FCC further add the below to Subpart E to 47 CFR Chapter I Subchapter A Part 8:

§ 8.2 Transparency for Interactive Computer Services.

Any person providing an interactive computer service in a manner through a mass-market retail offering to the public shall publicly disclose accurate information regarding its content-management mechanisms as well as any other content moderation, promotion, and other curation practices of its interactive computer service sufficient to enable (i) consumers to make informed choices regarding the purchase and use of such service and (ii) entrepreneurs and other small businesses to develop, market, and maintain offerings by means of such service. Such disclosure shall be made via a publicly available, easily accessible website or through transmittal to the Commission.

VII. Conclusion

For the foregoing reasons, NTIA respectfully requests that the Commission institute a rulemaking to interpret Section 230 of the Communications Act.

Respectfully submitted,

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Performing the Delegated Duties of the
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July 27, 2020

APPENDIX A: Proposed Rules

47 CFR Chapter I, Subchapter E
Part 130 – Section 230 of the Communications Decency Act.

Interpreting Subsection 230(c)(1) and Its Interaction With Subsection 230(c)(2).
§ 130.01
As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

(a) 47 U.S.C. 230(c)(1) applies to an interactive computer service for claims arising from failure to remove information provided by another information content provider. Section 230(c)(1) has no application to any interactive computer service's decision, agreement, or action to restrict access to or availability of material provided by another information content provider or to bar any information content provider from using an interactive computer service. Any applicable immunity for matters described in the immediately preceding sentence shall be provided solely by 47 U.S.C. § 230(c)(2).

(b) An interactive computer service is not a publisher or speaker of information provided by another information content provider solely on account of actions voluntarily taken in good faith to restrict access to or availability of specific material in accordance with subsection (c)(2)(A) or consistent with its terms of service or use.

(c) An interactive computer service is not being "treated as the publisher or speaker of any information provided by another information content provider" when it actually publishes its own or third-party content. Circumstances in which an interactive computer service actually publishes content include when:

(i) it affirmatively solicits or selects to display information or content either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool pursuant to a reasonably discernible viewpoint or message, without having been prompted to, asked to, or searched for by the user;

(ii) it reviews third-party content already displayed on the Internet and affirmatively vouches for, editorializes, recommends, or promotes such content to other Internet users on the basis of the content's substance. This paragraph applies to a review conducted, and a recommendation made, either manually by the interactive computer service's personnel or through use of an algorithm or any similar tool.

(d) An interactive computer service does not publish content merely by:

(1) providing content in a form or manner that the user chooses, such as non-chronological order, explicit user preferences, or because a default

setting of the service provides it, and the interactive computer service fully informs the user of this default and allows its disabling; or
(2) transmitting, displaying, or otherwise distributing such content, or merely by virtue of moderating third-party content consistent with a good faith application of its terms of service in force at the time content is first posted. Such an interactive computer service may not, by virtue of such conduct, be "treated as a publisher or speaker" of that third-party content. 47 U.S.C. § 230(c)(1).

Clarifying Subsection 230(c)(2).
§ 130.02
As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

(a) "obscene," "lewd," lascivious" and "filthy"
The terms "obscene," "lewd," "lascivious," and "filthy" mean material that

iv. taken as a whole, appeals to the prurient interest in sex or portrays sexual conduct in a patently offensive way, and which, taken as a whole, does not have serious literary, artistic, political, or scientific value;
v. depicts or describes sexual or excretory organs or activities in terms patently offensive as measured by contemporary community standards; to the average person, applying contemporary community standards; or
vi. signifies the form of immorality which has relation to sexual impurity, and have the same meaning as is given them at common law in prosecutions for obscene libel.

(b) "excessively violent"
The term "excessively violent" means material that

iii. is likely to be deemed violent and for mature audiences according the Federal Communications Commission's V-chip regulatory regime and TV Parental Guidance, promulgated pursuant to Section 551 of the 1996 Telecommunications Act Pub. L. No. 104-104, § 551, 110 Stat. 139-42 (codified at 47 U.S.C. § 303; § 330(c)(4));
iv. constitutes or intends to advocate domestic terrorism or international terrorism, each as defined in 18 U.S.C. § 2331 ("terrorism").

(c) "harassing"
The term "harassing" means any material that

iv. that sent by an information content provider that has the subjective intent to abuse, threaten, or harass any specific person and is lacking in any serious literary, artistic, political, or scientific value;
v. regulated by the CAN-SPAM Act of 2003, 117 Stat. 2699; or
vi. that is malicious computer code intended (whether or not by the immediate disseminator) to damage or interfere with the operation of a computer.

(d) "otherwise objectionable"
The term "otherwise objectionable" means any material that is similar in type to obscene, lewd, lascivious, filthy, excessively violent, or harassing materials.

(e) "good faith"

A platform restricts access to or availability of specific material (including, without limitation, its scope or reach) by itself, any agent, or any unrelated party in "good faith" under 47 U.S.C. § (c)(2)(A) if it:

v. restricts access to or availability of material or bars or refuses service to any person consistent with publicly available terms of service or use that state plainly and with particularity the criteria the interactive computer service employs in its content-moderation practices, including by any partially or fully automated processes, and that are in effect on the date such content is first posted;

vi. has an objectively reasonable belief that the material falls within one of the listed categories set forth in 47 U.S.C. § 230(c)(2)(A);

vii. does not restrict access to or availability of material on deceptive or pretextual grounds, and does not apply its terms of service or use to restrict access to or availability of material that is similarly situated to material that the interactive computer service intentionally declines to restrict; and

viii. supplies the interactive computer service of the material with timely notice describing with particularity the interactive computer service's reasonable factual basis for the restriction of access and a meaningful opportunity to respond, unless the interactive computer service has an objectively reasonable belief that the content is related to criminal activity or such notice would risk imminent physical harm to others.

Clarifying Subsection 230(f)(2).

§ 130.03

As used within 47 U.S.C. 230, 47 CFR Chapter I, Subchapter A and within this regulation, the following shall apply:

For purposes of 47 U.S.C. § 230(f)(3), "responsible, in whole or in part, for the creation or development of information" includes substantively contributing to, modifying, altering, presenting with a reasonably discernible viewpoint, commenting upon, or editorializing about content provided by another information content provider.

47 CFR Chapter I Subchapter A Part 8 ---Internet Freedom.

§ 8.2 Transparency for Interactive Computer Services.

Any person providing an interactive computer service in a manner through a mass-market retail offering to the public shall publicly disclose accurate information regarding its content-management mechanisms as well as any other content moderation, promotion, and other curation practices of its interactive computer service sufficient to enable (i) consumers to make informed choices regarding the purchase and use of such service and (ii) entrepreneurs and other small businesses to develop, market, and maintain offerings by means of such service. Such disclosure shall be made via a publicly available, easily accessible website or through transmittal to the Commission.