



View from the Beltway

Time to Rein in Social Media?

BY OWEN ULLMANN

THE INTERNATIONAL
ECONOMY
THE MAGAZINE OF INTERNATIONAL
ECONOMIC POLICY
220 I Street, N.E., Suite 200
Washington, D.C. 20002
202-861-0791
www.international-economy.com
editor@international-economy.com

The pros and cons to speech regulation.

Dominion Voting Systems' \$1.6 billion defamation lawsuit against Fox News for letting hosts and guests on its shows spread false claims that the company rigged the 2020 presidential election raises a vital question. Why can't the social media platforms that spread the same bogus reports be sued?

On March 18, eight days before Dominion filed its lawsuit against the cable news channel, a Facebook post made the false claim that "FINALLY, A JUDGE HAS RULED Dominion Voting Machines were designed to create fraud," according to a *USA Today* account.

Such "fake news" on Facebook, with nearly 200 million users in the United States, reaches many times the audience of Fox News, which peaks at 2.4 million during prime time. Yet Facebook and all other social media sites where malicious claims damaging to Dominion were posted can't be sued for libel; only those who wrote the posts are in legal jeopardy.

That's why Twitter is protected from a lawsuit even though it let lawyer Sidney Powell tweet falsehoods to her

1.2 million followers after Dominion sued her for defamation in January as the original source of the phony attacks on the company. Dominion's lawsuit alleged that "Powell doubled down, tweeting to her 1.2 million Twitter followers that she heard that '#Dominion' had written to her and that, although she had not even seen Dominion's letter yet, she was 'retracting nothing' because '[w]e have #evidence' and

Social media avoids legal liability by hiding behind Section 230 of the 1996 Communications Decency Act.

"They are #fraud masters!." Powell's attorneys argued that her claims were political speech and are therefore protected by the First Amendment.

Social media avoids legal liability by hiding behind Section 230 of the 1996 Communications Decency Act, which classifies them as Internet service providers, not publishers in the traditional sense like newspapers. So maybe it's time to change the 25-year-old law and treat social media platforms just like, say, the *New York Times*

online site. After all, they all engage in daily editorial decisions about what to make available to readers and have the ability to remove offending posts.

That appears to be the growing sentiment among Democrats and Republicans in Congress, where House Energy and Commerce Committee members lambasted the CEOs of Facebook, Google, and Twitter on March 25 for becoming massive echo chambers for extremist views, hate speech, and misinformation.

Yet while there is mounting bipartisan unhappiness with the current Section 230 shield, there is a wide gap between the two parties about what the problem is. Republican lawmakers contend social media platforms have a liberal bias and are unfairly censoring conservative speech, such as Twitter's and Facebook's suspension of former President Trump's account for repeatedly insisting that massive voter fraud cost him re-election.

Owen Ullmann is TIE's executive editor and author of Empathy Economics: The Remarkable Rise of Janet Yellen (Public Affairs, forthcoming in 2022).

On May 5, Facebook's Oversight Board, an outside group of experts set up to review controversial policy decisions, upheld Trump's suspension but gave Facebook six months to either make his ban permanent or set it for a specific period of time, rather than maintain the current open-ended suspension. The decision further enraged Trump and his supporters, who have vowed retribution.

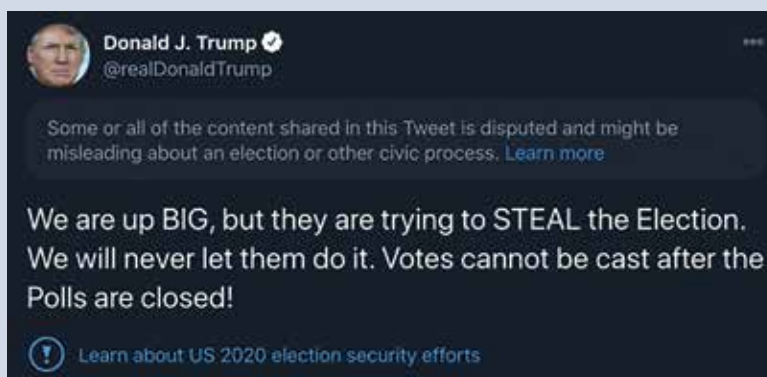
Democratic members of Congress, on the other hand, have a different beef: They complain that the social media giants aren't doing enough to take down baseless extremist posts.

This divergence of views is borne out by public opinion polls. Republican voters are convinced the social media giants are run by leftists bent on reshaping America's political landscape. Democrats are just as convinced that Facebook CEO Mark Zuckerberg and his counterparts at other platforms only believe in ever-growing profits and will promote any post—no matter how vile—that goes viral.

Consensus across the political spectrum is limited to contempt for Zuckerberg and his ilk and recognition that for all the good social media offers—letting families and friends connect from a distance and allowing new businesses to develop a loyal following—it also is the source of a lot of ugliness: hate speech, cyber-bullying, revenge porn, ridiculous conspiracy theories, and incitement to violence.

Social media is the source of a lot of ugliness: hate speech, cyber-bullying, revenge porn, ridiculous conspiracy theories, and incitement to violence.

Yet despite broad public unhappiness, there is no evidence that Americans are expressing their unhappiness by boycotting social media. To the contrary, audiences keep growing.



Republican lawmakers contend social media platforms have a liberal bias and are unfairly censoring conservative speech, such as Twitter's suspension of former President Trump's account for repeatedly insisting that massive voter fraud cost him re-election.

So what's the best course forward? One easy step would be for the social media giants to ban all political advertising—as Twitter announced in 2019—in a goodwill gesture to show they are “social,” not “partisan,” platforms. That would be an easy reform, since political ads account for a tiny slice of their revenue—less than 1 percent for Facebook. So far, Zuckerberg has refused to do so.

As for legal reforms, University of Wisconsin professor Kathleen Culver, who heads the university's Center for Journalism Ethics, urges a go-slow approach because changing Section 230 could have so many unintended consequences.

Culver explained that the thinking behind Section 230's legal protections at a time when social media outlets were in their infancy was to stimulate online innovation. “The idea was—and I think the idea is correct—that if you don't give some protections to the people who are providing these platforms, they will be sued into oblivion before they can develop anything,” she said. “So, there were two models: the publisher model, like the *New York Times*, and the common carrier model, like AT&T.”

In protecting social media, Congress assumed these platforms would not edit posts the way the *Times* edits its content, including letters. But it did want them to take down offensive posts that contained hate speech, calls to violence, revenge pornography, and other defamatory content without being open to lawsuits. To this day, Culver noted, “if I post something defamatory on Facebook, I can be sued but Facebook can't. If I put that same content into the *Wisconsin State Journal* (Madison's daily newspaper), both I and the *State Journal* can be sued.”

One compromise she suggested is to continue legal protection for platforms that demonstrate they have processes in place to remove problematic content, “but if you're just a Wild West kind of platform that allows anything, then you don't get the immunity.”

That approach might curb abuses on dating websites that allow users to engage in revenge porn—what Culver calls “non-consensual pornography”—by posting intimate photos of someone without their permission. It also would protect smaller websites from being sued out of existence, for example, a local Chamber of Commerce that posted a negative



Katie Harbath, former director of public policy at Facebook, worries that repealing Section 230 will have unintended negative consequences. She believes social media companies are getting better at being able to detect and remove offensive material, “but that doesn’t mean that there’s not a long, long way to go to making those systems much more precise and quicker in terms of what they’re taking down.”

review about a business that could be the basis of a defamation lawsuit.

“Section 230 came from a very good place. It did stimulate innovation. It did provide necessary protection,” Culver said. “But we now have people using that immunity in ways that weren’t predicted and in ways that are very problematic. It needs reform, but it doesn’t need repeal ... If you were using it as a shield, basically a get-out-of-jail-free card for problematic processes and actions, then you lose the immunity.”

Perhaps the answer is to make Section 230 resemble copyright law. If someone posts a copyrighted song on YouTube, the video platform can’t be held liable for copyright infringement as long as the person who wrote the song notifies YouTube and gives it the opportunity to take it down.

Getting rid of Section 230 altogether, as some members of Congress are advocating, might prompt websites

to eliminate all but innocuous social media posts for fear that any strong political, social, or cultural opinion could be the basis of lawsuits alleging everything from defamation to incitement to violence.

Katie Harbath, who until recently had overseen politics and government engagement for Facebook as its Global Director of Policy Programs, agrees with Culver that repealing Section 230 will have unintended negative consequences. “I think it will actually do more harm for speech and for people being able to express themselves using not only the big social media shields, but any of the up-and-comers because companies will over-moderate content.” She also worries that new federal regulations will prove too burdensome for startups.

Harbath, who previously oversaw digital strategy for the National Republican Senatorial Committee, thinks more transparency by social

Perhaps the answer is to make Section 230 resemble copyright law.

media about decisions to remove posts would help allay concerns on the left and the right about political bias and partisan censorship. “Companies have to get better at execution and explaining to people why they’re taking stuff down, what their policies actually are, why people are getting stuff removed or not removed as part of the process,” she said.

She believes social media companies are getting better at being able to detect and remove offensive material, “but that doesn’t mean that there’s not a long, long way to go to making those systems much more precise and quicker in terms of what they’re taking down,” she said. “It takes time to try to build more precise detection systems.”

Still, she thinks some reforms to Section 230 may be necessary to make

social media companies more responsible without allowing them to be litigated out of existence. For example, Facebook acts somewhat like an editor when it decides how much to amplify a post and with whom to share it. So perhaps it should be held accountable for what it chooses to amplify by empowering humans to make more of those decisions rather than relying on algorithms. Harbath admitted she is ambivalent about holding legally liable not only the person who posted the item but also the companies based on what they do with that content once it’s on their platform.

“The more I think about it, she said, “the right reform for Section 230 might be that companies aren’t necessarily liable for what is put on their platform but rather should be held accountable for when they act on a piece of content or user. I think it’s totally reasonable for Trump and others to be able to sue Facebook for kicking them off and



University of Wisconsin professor **Kathleen Culver**, who heads the university’s Center for Journalism Ethics, notes “Section 230 came from a very good place. It did stimulate innovation. It did provide necessary protection. But we now have people using that immunity in ways that weren’t predicted and in ways that are very problematic. It needs reform, but it doesn’t need repeal.”

figuring out a way for courts to help in determining if what they said does hit the threshold for inciting violence, etc.”

A real-world variation of Harbath’s proposal emerged on April 8, when the civil rights group Muslim Advocates filed a lawsuit in Washington, D.C., Superior Court against Facebook for allegedly violating the District’s consumer protection law, the Associated Press reported.

The suit alleged that Zuckerberg made “false and deceptive” statements to Congress when he said Facebook removes hate speech and other material that violates its rules. It said Zuckerberg and other senior executives “have engaged in a coordinated campaign to convince the public, elected representatives, federal officials, and non-profit leaders in the nation’s capital that Facebook is a safe product.”

In fact, the lawsuit alleged, Facebook did little in response to repeated pleas to remove hate speech and calls to violence on its platform. Making false and deceptive statements about removing hateful and harmful content violates the consumer protection law and its bar on fraud, according to the lawsuit. “Every day, ordinary

Some reforms to Section 230 may be necessary.

people are bombarded with harmful content in violation of Facebook’s own policies on hate speech, bullying, harassment, dangerous organizations, and violence,” the lawsuit said. “Hateful, anti-Muslim attacks are especially pervasive on Facebook.”

In Congress, lawmakers have proposed numerous changes to Section 230 but are far from coming to any consensus on what to do. Proposals range from outright repeal to minor tweaks. In a rare bipartisan move, Senators Brian Schatz (D-Hawaii) and John Thune (R-South Dakota) are co-sponsoring the PACT Act, which would

require companies to be more transparent about how they monitor controversial content and moderate it.

Representative Anna G. Eshoo (D-California) is pushing a bill to remove tech companies’ legal protections when their algorithms amplify content that leads to violence. In a similar vein, Democratic Senators Mark Warner of Virginia, Mazie Hirono of Hawaii, and Amy Klobuchar of Minnesota are sponsoring a bill to hold social media companies liable for enabling cyber-stalking, targeted harassment, and discrimination on their platforms.

Greater transparency got an endorsement from Zuckerberg at the March 25 congressional hearing, where he and the chieftains from Google and Twitter were grilled. Zuckerberg said a revised Section 230 should eliminate liability protection for tech platforms if they do not have “adequate systems in place to address unlawful content” and take it down. But he qualified his suggestion by saying that start-ups should not be held to the same legal standard as giant companies like Facebook because they lack resources to hire monitors and programmers to develop algorithms capable of identifying all the content that needs to be taken down.

Google CEO Sundar Pichai, whose company owns YouTube, endorsed Zuckerberg’s call for more transparency even as he insisted that Section 230 be preserved, citing it for bringing about “unprecedented access to information and a vibrant digital economy.” Twitter CEO Jack Dorsey also supported greater transparency but said Zuckerberg’s idea for distinguishing between large and small platforms was too problematic to write into law.

Obviously, the tech behemoths are protective of the status quo; that’s how they got to be the world’s most valuable and profitable companies—and monopolies in their respective fields. Yet just as the passage of Section 230 led to unintended consequences unforeseen twenty-five years ago, repealing

Rather than tighter government regulation, we need more free speech from social media companies to explain their censorship rules, and more aggressive policing by users to expose bad actors, disinformation, and irresponsible behavior by the platforms that we have come to depend on so very much.

it likely would lead to new unintended consequences.

Among the biggest casualties of greater government oversight would be one of our most precious freedoms: open expression. Yes, speech that clearly incites violence needs to be curbed, but the government should not be in the role of deciding what speech crosses a line into discrimination, harassment, or disinformation.

Proposals to demand greater transparency from companies concerning how they monitor, amplify, and take down content is a good first step to improving accountability. Lawsuits such as the one filed by Muslim Advocates against Facebook involving failure to remove posts that could lead to violence or economic harm seem a reasonable step to strengthen accountability. It keeps the federal government out of the business of trying to regulate speech.

Rather than tighter government regulation, we need more free speech from social media companies to explain their censorship rules, and more aggressive policing by users to expose bad actors, disinformation, and irresponsible behavior by the platforms that we have come to depend on so very much.

And as a final step, maybe we need to examine our own dependency on social media and force positive change by doing one thing en masse that will surely get the tech titans’ attention: unplug. ♦