Preserving Section 230 Is Critical to Combating Hate Online

Companies like Facebook, Google and Twitter must do more to combat hate and disinformation on their platforms. Preserving Section 230, rather than radically altering it, is the way to encourage that.

Section 230 of the Communications Decency Act

- The first operative provision in Section 230, which was written in 1996, reads: "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 230's other key provision makes it clear that such interactive services won't be treated as publishers or held liable for curation. They can "restrict access" to material they or their users consider "obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable."

The History of Section 230, and the Need for the Law Then and Now

- Removing Section 230 could revert the legal landscape to the pre-1996 status quo.
    - A pair of legal decisions had put into a bind any "interactive computer service" that hosted content for others.
        - One case held a web platform that *did* moderate content could be sued for libel (just as the original speaker or poster could be) if that alleged libel evaded the platform's moderators.
        - The other case held that sites that *did not* moderate were not exposed to such liability, creating an obvious disincentive for websites, message boards and modern-day apps to curate content and take down objectionable materials.

- Before Section 230 became law, this pair of decisions meant that websites hosting third-party content were incentivized to go in one of two directions:
    - Either don't moderate at all, tolerating not just off-topic comments but all kinds of hate speech, defamation and harassment; or
    - Vet every single post, leading to massive takedowns and removal of anything that might plausibly subject them to liability for statements made by their users.

- The authors of Section 230 rightly wanted to provide a better path:
    - They wanted to encourage owners of websites and other interactive computer services to curate content on their websites as these sites themselves saw fit.
    - They struck a balance for interactive computer services that host other people's speech: Platforms should have very little liability for third-party content, except when it violates federal criminal law (and some civil provisions too).

Why Is Section 230 Necessary to Preserving Free Expression Online? Section 230:

- Lowers barriers for people to post their ideas online.
- Protects content moderation choices that platforms have the right to make.
- Allows platforms to "in good faith" take down content if it is harassing, obscene or violent, and if it is "otherwise objectionable" and "constitutionally protected."
    - Under current law, much hate speech falls under these categories.
    - Platforms can therefore take down hate speech under their constitutionally protected rights to curate, and because Section 230 lets the platforms moderate without exposing them to publisher liability.
    - This gives platforms a freer hand to moderate their services.

Section 230 Is Not Sacrosanct, but It's Still Needed. Any Changes Must Meet a High Bar.

- Section 230 is necessary but not sufficient to make competing sites and viewpoints viable online.
    - We also need, among other things, open internet protections, privacy laws, antitrust enforcement and new models for funding quality journalism in the online ecosystem.
    - Changing or repealing Section 230 wouldn't impose liability for content that isn't already tortious or criminal.
- The Section 230 debate should center on when it's appropriate or beneficial to impose legal liability on parties hosting third-party speech, but a platform's refusal to re-post or amplify a particular news story wouldn't make them liable for anything even in Section 230's absence.
- Broader debates about legal protections for hate speech and incitement raise important First Amendment questions but aren't solely or even primarily about Section 230.
- Changes to Section 230 must consider the possibility of unintended consequences and overreach, no matter how surgical proponents of a change may think an amendment would be.
- Any changes to Section 230 should be made deliberately and delicately, recognizing that repealing or radically weakening the law could make it harder — not easier — for platforms to remove hate speech.
- In fact, this is just what President Trump, Republican lawmakers and others hope to gain by amending or repealing Section 230. They want to make it harder for platforms to moderate and remove disinformation and conspiracy theories.

Fighting Hate Online Requires a Flexible Multi-Pronged Approach

- Our Change the Terms model corporate policies recommend that platforms:
    - Implement clearer policies
    - Enforce those policies equitably
    - Enhance transparency for content-moderation decisions
    - Regularly audit recommendation algorithms
- The Stop Hate for Profit campaign got advertisers to boycott when Facebook refused to act.
- Our ad-tax proposal would generate revenue from online ads to fund quality journalism.
- Our privacy legislation would prevent platforms from abusing people's data and violating civil rights in the first place, rather than relying only on Section 230 suits to vindicate these rights.