

HOW DO YOU SOLVE A PROBLEM LIKE TROLLING? Section 230, “Free Speech,” and Digital Extremism

(NOTE: this activity is designed for small, upper-division and/or graduate-level classes. It would also be most effective as a combination of in-class and homework assignments spread over multiple class periods.)

Background

Section 230 of the Communications Decency Act of 1996 is arguably the most important legal statute shaping contemporary digital culture. And yet, for something so impactful, very few Internet users are even aware of it. Specifically, the provisions in subsection ©—“Protection for ‘Good Samaritan’ blocking and screening of offensive material”—are what most people mean when referring to Section 230. These two protections are:

“(1) Treatment of publisher or speaker

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.

(2) Civil liability

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; or
- (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).”

The lawmakers who drafted Section 230 intended, on the one hand, to ensure that Internet service providers and content platforms would not face obstacles to innovation, and, on the other hand, that they would have significant discretion in moderating content as they saw fit. They believed that the law would encourage service providers to engage in good faith content moderation with the knowledge that they wouldn’t be held liable for anything that they “missed.” Without Section 230, it’s difficult to imagine Facebook, Twitter, YouTube, or even Amazon and Google existing in their current states.

For some, Section 230 represents defense of “Internet freedom,” free speech, and free expression. For others, however, it is what enables trolls and digital extremists to harass and spread hate speech freely and with few repercussions, while providing little incentive for platform companies to do anything to curtail their activities.

Activity: Classroom Debate

Divide the class into three groups: one group will take the position that Section 230 should be left alone; a second group will argue that Section 230 should be revised; and the third group will act as judges for the debate. While brainstorming arguments to support their positions, here are some questions that each group should consider:

- Does freedom of speech/expression guarantee equal *access* to privately-owned and operated online platforms like Facebook? Why or why not?
- Are there any significant differences between a troll harassing someone, an extremist (e.g., a member of ISIS, a radical white supremacist, etc.) recruiting new followers, and an individual expressing their personal political opinions online? Why or why not?
- Who should be held responsible for reacting to trolls and/or digital extremists: Platform companies themselves (e.g., Facebook, Twitter)? Governmental agencies (e.g., Congress, the FCC, the FBI, local law enforcement)? Individual Internet users? No one? Another type of organization/entity? Why should (or shouldn't) they be held responsible?
- For “*leave Section 230 alone*” group: What important rights and/or abilities does Section 230 protect? What are some possible negative consequences of changing the law?
- For “*revise Section 230*” group: What specific changes should be made to Section 230? How should they be enforced?
- For “*debate judges*” group: How will a “winner” be determined? Which criteria will be most important (e.g., supporting evidence, soundness or argument, credibility of potential effects, etc.)?

As supporting evidence for their arguments and for judging the debate, groups should examine pertinent real-world examples. Some examples include:

- A 2018 U.S. District Court ruling in *Gersh v. Anglin* finding that targeted anti-Semitic harassment is not protected by the First Amendment: https://www.splcenter.org/sites/default/files/documents/order_on_motion_to_dismiss.pdf.
- Twitter’s decision to remove Milo Yiannopolous’s verification checkmark in 2016: <https://www.buzzfeednews.com/article/alexkantrowitz/twitter-unverifies-milo-yiannopoulos-leading-to-speech-police#.ljb1Y9a5W>.
- Apple, Facebook, and YouTube’s decisions to remove content from Alex Jones and Infowars in 2018: <https://www.nytimes.com/2018/08/06/technology/infowars-alex-jones-apple-facebook-spotify.html>.
- The passage of the FOSTA and SESTA bills in 2018: <https://www.vox.com/policy-and-politics/2018/4/23/17237640/fosta-sesta-section-230-internet-freedom>.
- Facebook and Twitter’s contrasting strategies with respect to ISIS: <https://www.wired.com/2015/11/facebook-and-twitter-face-tough-choices-as-isis-exploits-social-media/>.

Stage a debate between the first two groups. After each side has presented its argument and had an opportunity to address the opposing side’s points, allow the “judges” to render their verdict and determine the “winner.” Afterwards, discuss as a class what you have learned, and how—if at all—this knowledge will affect how you use the Internet.