

July 30, 2013

The Honorable John Rockefeller IV
Chairman
Committee on Commerce, Science, and
Transportation
United States Senate

The Honorable John Thune
Ranking Member
Committee on Commerce, Science, and
Transportation
United States Senate

The Honorable Frederick Upton
Chairman
Committee on Energy and Commerce
United States House of Representatives

The Honorable Henry Waxman
Ranking Member
Committee on Energy and Commerce
United States House of Representatives

Dear Senator Rockefeller, Senator Thune, Representative Upton, and Representative Waxman,

The undersigned advocacy organizations, associations, investors, and legal scholars write to express our strong support for Section 230 of the Communications Act (47 U.S.C. § 230) and our opposition to the recent proposal by state attorneys general to create a broad new exception to the intermediary liability protections that law provides. Section 230 is the legal cornerstone of the Internet economy, enabling the unprecedented scope of lawful commerce and free expression that the Internet supports today. By substantially eroding this essential protection, the proposed amendment would jeopardize the continued growth of the entire Internet industry and the free expression rights of Internet users everywhere. We urge Congress not to go down this dangerous path.

Passed in 1996 to spur investment in Internet services and promote online expression, Section 230 protects operators of Internet services from liability for content posted by their users. For nearly twenty years, this longstanding and carefully crafted protection has enabled online services both to host massive quantities of user-generated material and to combat undesirable or potentially illegal activity without fear that either hosting or removing user content will trigger liability. By providing certainty for the service providers that host and carry all Internet communication, Section 230 has enabled investment in countless revolutionary services that are responsible for a fifth of US economic growth.¹ In contrast, research indicates that policies that increase uncertainty and risk in the Internet sector would deter investment and undermine job creation, contributing to an international consensus that “[l]egal ambiguities weaken private sector confidence.”² It is no coincidence that the United States, which exceeds almost all other countries in robust protections for intermediaries, also leads the world in online innovation.

Internet services also provide crucial platforms for all manner of content – from the controversial to the newsworthy to the mundane – making Section 230 as important as the First Amendment

¹ McKinsey Global Institute, “Internet Matters: The Net’s sweeping impact on growth, jobs and prosperity,” May 2011, http://www.mckinsey.com/insights/high_tech_telecoms_internet/internet_matters.

² See Organisation for Economic Cooperation & Development (OECD), *The Role of Internet Intermediaries in Advancing Public Policy Objectives* (2011) at 15.

to online free expression. Congress reaffirmed Section 230's importance when it passed the SPEECH Act in 2010, requiring US courts to apply both the First Amendment and Section 230 in assessing foreign defamation judgments. Section 230 is essential to eliminating the liability risk that would otherwise chill service providers from hosting third-party content. Without it, operators of services like content hosts, blogging platforms, social networks, and even search engines would risk liability every time they hosted or displayed content provided by others, including user-generated content. This would dramatically reduce opportunities for free expression online. Indeed, had Congress lacked the foresight to enact Section 230 during the Internet's infancy, many of the platforms that have transformed everything from entertainment and personal communications to democratic participation and social activism might not exist at all.

The AGs' proposed exception would replace the certainty that Section 230 provides with open-ended legal risk. By hosting third-party content, online service providers would expose themselves to potential prosecution under literally thousands of criminal statutes on a state-by-state basis. Keeping up with the thicket of state criminal laws would be a significant burden, especially for start-ups and smaller companies, and the risk of liability would create a strong incentive for companies to minimize or avoid interactive features and user-generated content. Users of those services big – or brave – enough to continue allowing user content at all would face invasive and censorial screening procedures as companies seek to reduce their risk. Upsetting the safe harbor that has enabled the US Internet sector to lead the world would thus endanger jobs and future growth and undermine the power of the Internet to promote free expression.

The AGs' letter focuses principally on online advertisements for child prostitution. We welcome discussion about the serious problem of sex trafficking, and stand ready to work together to find ways to specifically address the problem while preserving online innovation and free speech. But there is nothing narrow or targeted about the AGs' proposal. It would open the door to liability for intermediaries based on the activity of their users under an almost limitless range of state and local criminal laws, covering everything from defamation (which is criminal in many states) to miscellaneous misdemeanors like selling spray paint or tanning services to minors.

There is no reason to take such dramatic risks with the health of the Internet. As evidenced by the numerous prosecutions cited in the AGs' letter, nothing in Section 230 prevents the punishment of actual wrongdoers. Indeed, Internet companies play an active role in these prosecutions by providing extensive support to law enforcement; major Internet companies report responding to tens of thousands of law enforcement requests per year. Moreover, Section 230 protects Internet companies from liability only for the act of providing communications platforms. If an Internet company engages in truly culpable behavior, for example by actively and knowingly conspiring in illegal activity, Section 230 would not protect it.

Any effort to facilitate effective law enforcement against online child prostitution must focus on narrowly tailored solutions that do not undermine the vital role Section 230 plays in enabling lawful commerce and speech. Discarding the cornerstone of the Internet's legal framework and subjecting Internet companies to ongoing and open-ended risks of criminal liability for their users' behavior would fundamentally threaten the innovation economy and online free speech. Such a dangerously broad proposal should not be the starting point for what we hope can be a productive dialogue between Congress, the State AGs, and the Internet community.

Respectfully,

NGOs, Trade Associations, and Investors:

American Booksellers Foundation for Free Expression

American Civil Liberties Union

ACLU of California

American Library Association

American Society of News Editors

Association for Competitive Technology

Association of Alternative Newsmedia

Association of American Publishers

Association of Research Libraries

Center for Democracy & Technology

Competitive Enterprise Institute

Computer & Communications Industry Association

DKT Liberty Project

Electronic Frontier Foundation

Freedom to Read Foundation

Internet Association

Internet Infrastructure Coalition

National Coalition Against Censorship

NetChoice

New Atlantic Ventures

Public Knowledge

TechFreedom

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Andrew Gilden, Thomas C. Grey Fellow, Stanford Law School

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Jennifer Stisa Granick, Director of Civil Liberties, Stanford Center for Internet and Society

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Mark A. Lemley, William H. Neukom Professor, Stanford Law School; Director, Stanford Program in Law, Science, and Technology; Senior Fellow, Stanford Institute for Economic Policy Research; partner, Durie Tangri LLP; founder, Lex Machina Inc.

Hiram A. Meléndez-Juarbe, Associate Professor, University of Puerto Rico Law School

Deirdre K. Mulligan, Assistant Professor, School of Information, University of California, Berkeley; Faculty Director, Berkeley Center for Law and Technology

Ira Steven Nathenson, Associate Professor of Law, St. Thomas University School of Law

Aaron Perzanowski, Associate Professor, Case Western Reserve University School of Law

David G. Post, Professor of Law, Beasley School of Law, Temple University

Jason M. Schultz, Associate Professor of Clinical Law, NYU School of Law

Eugene Volokh, Gary T. Schwartz Professor of Law, UCLA School of Law

Prof. Peter K. Yu, Kern Family Chair in Intellectual Property Law, Drake University Law School