



**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Section 230 of the Communications) RM - 11862
Act of 1934 (as amended))

**REPLY COMMENTS OF INTERNET ASSOCIATION OPPOSING THE NATIONAL
TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION'S PETITION FOR
RULEMAKING**

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EXECUTIVE SUMMARY

Internet Association (“IA”) appreciates the opportunity to respond to comments submitted to the Federal Communications Commission (“FCC” or “Commission”) regarding the National Telecommunications and Information Administration’s (“NTIA”) Petition for Rulemaking (the “Petition”) on Section 230. In our reply comments IA will dispel misconceptions about Section 230 and content moderation reflected in comments supporting the Petition, and highlight a few of the important points made by the many parties opposing the Petition. With a better understanding of today’s internet and the potential harms that would result from the rules proposed by the Petition, it is clear that the FCC should deny the Petition.



TABLE OF CONTENTS

I. THE PETITION WILL ADVERSELY IMPACT A WIDE RANGE OF INDIVIDUALS AND ENTITIES THAT RELY ON SECTION 230.....	1
II. NTIA’S PETITION MISCHARACTERIZES USERS’ ABILITY TO EXPRESS THEMSELVES ONLINE.....	6
III. THE PROPOSED RULES WOULD HARM CONSUMERS.....	9
IV. CONTENT MODERATION REMAINS A CHALLENGE FOR SERVICES OF ALL SIZES.	13
V. CONCLUSION.	17



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Internet Association (“IA”) appreciates the opportunity to respond to comments submitted to the Federal Communications Commission (“FCC” or “Commission”) regarding the National Telecommunications and Information Administration’s (“NTIA”) Petition for Rulemaking (the “Petition”) on Section 230.

I. THE PETITION WILL ADVERSELY IMPACT A WIDE RANGE OF INDIVIDUALS AND ENTITIES THAT RELY ON SECTION 230.

The President’s Executive Order on Preventing Online Censorship¹ tasking NTIA to submit this Petition to the FCC, and the Petition itself,² discuss the need for action, as well as the intended impact of that action, solely in terms of a few large social media companies. Commenters who suggest the Commission should regulate in this area

¹ Exec. Order No. 13925, 85 Fed. Reg. 34,079, 34,081 (May 28, 2020).

² Petition for Rulemaking of the National Telecommunications and Information Administration, File No. RM-11862 (filed July 27, 2020) (“Petition”).



generally fall into the same trap.³ Section 230’s protections, however, apply to a broad range of “interactive computer services”⁴ and “users.”⁵ Thus, IA reiterates its call for the Commission to carefully consider the harmful impacts of the rules proposed by the Petition (“Proposed Rules”) would have on companies of all types and sizes, as well as users.

The docket contains ample evidence of the negative impact that the Proposed Rules would have on a broad range of entities and individuals.⁶ Many of these assessments come from those who would be most directly impacted. For example, Reddit’s comments describe in concrete terms the impact the Proposed Rules would have on user communities on its service, including statements from an individual

³ See, e.g., Comments of Internet Accountability Project at 2 (“Based on unprecedented expansion from Big Tech companies since 1996, a clear and present need exists to reconsider the liability protections broadly available to modern companies who engage in selective censorship without fault.”). Cf., Comments of R Street at 7-8 (noting this framing of the issue ignores the purpose of Section 230, “It was not a sweetheart deal for the largest players or subsidies to grow their Internet businesses— instead, it allows all websites, regardless of size or design, to develop services by which users can share information.”).

⁴ 47 U.S.C. § 230(f)(2). Section 230’s definition of “interactive computer service” itself shows the diversity of services which benefit from its protections by specifically referencing “internet access providers,” “educational institutions,” and “libraries.” And indeed, each of these different types of interactive computer services have availed themselves of Section 230’s protections in court. See, e.g., *E360INSIGHT, LLC v. Comcast Corp.*, 546 F. Supp. 2d 605 (N.D. Ill. 2008) (applying Section 230 to an internet service provider); *National Association of Deaf v. Harvard University*, Case No. 3:15-cv-30023-KAR (D. Mass. March 28, 2019) (applying Section 230 to a university); *Kathleen R. v. City of Livermore*, 104 Cal. Rptr. 2d 772 (2001) (applying Section 230 to a library). The Comments and Reply Comments of the American Library Association explain in detail how libraries rely on Section 230’s protections and how they would be adversely impacted by the Proposed Rules.

⁵ 47 U.S.C. § 230(c)(1) & (c)(2)(providing that “users” also benefit from the immunities).

⁶ Comments of Imgur, Inc. at 1 (“Section 230 is the bedrock upon which the diverse and astonishingly successful universe of interactive online activity – from blogging to social networking to photo and video sharing sites to consumer reviews of products and services— has been able to flourish.”).



moderator-user. Reddit describes how volunteer community moderators set their own rules for their communities and “are empowered to remove any post that does not follow their rules, without any direction from Reddit, Inc.”⁷ Reddit notes that this system accounts for 99.7 percent of all non-spam content removals on Reddit and how user moderation “inherently accounts for differences in cultural norms and contextual nuance among a diverse global userbase.”⁸ Reddit also explains how Section 230 has protected volunteer moderators from lawsuits⁹ and cautions the FCC that,

In the debate on Section 230, it is crucial to account for the diverse array of platforms and services that depend on the flexibility the law offers. . . . But the debate often ignores that Section 230 protects the moderation decisions of individual users in the context of Reddit and other community-moderated fora.¹⁰

Other individual companies also explain how the Proposed Rules would impact their businesses. In their joint submission, Vimeo Inc., Automattic, Inc., and Reddit, Inc., emphasize that “the rules will impose costly burdens on businesses that host and facilitate user content by exposing them to liability for user content and by penalizing content moderation.”¹¹

Moreover, organizations that represent sectors within the internet ecosystem describe the potential effects on their specific sectors. For example, the Internet

⁷ Comments of Reddit, Inc. at 3 (Reddit, Inc. is a member of IA).

⁸ *Id.*

⁹ *Id.* at 5.

¹⁰ *Id.* at 13.

¹¹ Comments of Vimeo, Inc., Automattic, Inc., and Reddit, Inc. at 26 (Vimeo, Inc. is also a member of IA).



Infrastructure Coalition explains in detail, with examples from member companies such as Cloudflare, Donuts, and Rackspace, how the services that form the backbone of the internet rely on Section 230's protections and how the Proposed Rules would impact their businesses.¹² Additionally, their comments explain how the Proposed Rules' creation of new liability risks for removing types of content not specifically listed in Section 230(c)(2)(A) would put businesses in their sector in an untenable situation.

To avoid litigation risk, a business,

would be forced to maintain content on its network regardless of the threat that it may pose to its legitimate business goals. For example, failing to remove some types of content may result in the blacklisting of a provider's Internet Protocol ("IP") addresses either by third-party email providers seeking to block spam or third party Internet content filtering services. This can have a major impact on a provider's business because the available pool of IP addresses is severely limited and, therefore, each of a provider's IP addresses is commonly shared among numerous customers. In addition, some types of content draw a significantly greater intensity of cyberattacks, greatly increasing the costs of hosting it.¹³

These concerns are echoed in Akamai Technologies' comments, which said,

"[i]mposing new regulatory obligations that may impede the operation of CDNs [Content Delivery Networks] would run directly contrary to the very purpose of section 230, with negative consequences for the internet as we know it today."¹⁴

¹² Comments of Internet Infrastructure Coalition at 5.

¹³ *Id.*

¹⁴ Comments of Akamai Technologies at 7.



Contrary to NTIA’s assertions in its Petition,¹⁵ many commenters agree that the Proposed Rules would harm vibrancy and diversity in the online ecosystem by introducing steep new barriers to entry and negatively impacting startups and small companies.¹⁶ The Internet Infrastructure Coalition says, “NTIA’s proposal, therefore, would disrupt the basic infrastructure of the Internet even as it drives increased costs for individuals and small businesses. By raising barriers to entry, it would perversely undercut a broad array of competitive services, leaving only well-funded companies with the resources to maintain their own websites.”¹⁷ Startup advocacy organization, Engine, goes even further calling NTIA’s claim that Section 230 harms startups “absurd.”¹⁸ Engine explains how the Petition would result in an increase in the already high costs of meritless litigation and impose new regulatory burdens which would fall “disproportionately on smaller companies.”¹⁹ Therefore, the net result of the Proposed Rules would be that, “there are dramatically fewer places on the Internet where users

¹⁵ Petition at 14.

¹⁶ See, e.g., Comments of Innovation Defense Foundation at 4; Comments of Contextly at 3; Comments of App Coalition at 5; Comments of Engine at 11-12; Comments of Vimeo, Inc., Automattic, Inc., Reddit, Inc. at 26; Reply Comments of the American Library Association at 5; Comments of National Taxpayers Union at 3; Comments of Copia Institute at 1, 5-7.

¹⁷ Comments of Internet Infrastructure Coalition at 10.

¹⁸ Comments of Engine at 11-12 (explaining “[t]he notion that protections from virtually unlimited legal liability could somehow be bad for early-stage startups is so perplexing that NTIA predictably makes no effort to justify this claim with anything beyond mere supposition. It is, of course, simple common sense that as the cost of launching and operating a company increases, the rate of new firm formation will decrease.”). See also, Comments of Copia Institute at 1 (highlighting the Petition’s assertion that “[L]iability shields can deter entrance” as the most egregious of the “misstatements and misapprehensions about how Section 230 operates in the Petition”).

¹⁹ Comments of Engine at 14.



can go to express themselves, making it harder for diverse viewpoints to find a home online.”²⁰

II. NTIA’S PETITION MISCHARACTERIZES USERS’ ABILITY TO EXPRESS THEMSELVES ONLINE.

In its Petition, NTIA portrays the internet as though users are limited to choosing among a few large social media companies to express themselves online. IA was joined by a number of commenters in rebutting this characterization.²¹ In fact, a number of commenters convincingly refute this characterization by providing a more thorough examination of how users can leverage a variety of online services to express themselves often at no or low cost.

Today’s internet provides a wide array of online services and tools that allow individual users easy and low cost options to express themselves. A service that supports online publishers, Contextly, states in their comments, that

[t]he truth, as anyone who has been alive before and after the invention of the World Wide Web, is that never in history has the world seen a wider range of thoughts, arguments and media than exists on the Web and internet today. . . . But thanks to Section 230 which makes [the] speaker, not the printing press, responsible for the speech and the revolutionary economics of the internet, the cost

²⁰ *Id.* at 15; *See also*, Reply Comments of American Library Association at 5 (noting “A petition that claims to increase consumer choice would have the opposite effect, with deleterious impacts on American innovation as well as the marketplace of ideas.”).

²¹ *See, e.g.*, Comments of Consumer Technology Association, Comments of Netchoice, Comments of INCOMPAS, Comments of Engine, Comments of App Coalition, Comments of Imgur, Comments of Contextly, Comments of National Taxpayers Union.



of speech has fallen to zero. Literally anyone can walk into a library or use the free wifi at a McDonalds, logon to the internet, and start – for *free* – a new blog, website, Instagram account, etc, and instantly be findable by billions of people around the world.²²

The App Coalition agrees and provides statistics that back up this claim, stating,

[i]f the market for internet access services can rely on market forces, the app and internet economy are deserving of similar consideration. While the petitioners frame the Internet as providing restricted access, there are over 1.79 billion websites. In terms of apps, as of the first quarter of 2020, Android users were able to choose between 2.56 million apps, from the Google Play Store and Apple's App Store had almost 1.85 million available apps for iOS. These numbers would indicate that there are plenty of opportunities for consumers to engage with the news and other content, services and communities of their choosing. Moreover the market for app development and websites has low barriers to entry.²³

Against this backdrop, NTIA's claim that at the time of Section 230's enactment

“[o]nline services faced a competitive landscape”²⁴ as opposed to today when

consumers supposedly face limited choice is not credible. This is particularly so when

the evidence NTIA provides is an article from 1987 stating that at that time there were

“40 consumer-oriented services.”²⁵ Further, NTIA ironically cites the lack of

interoperability among platforms and the “walled garden” business model as

²² Comments of Contextly at 2.

²³ Comments of App Coalition at 6. Apps and websites fall within the definition of “interactive computer services” protected by Section 230. See *Herrick v. Grindr*, 306 F. Supp. 3d 579, 588-89 (S.D.N.Y. 2018) (explaining why both apps and websites are ICSs).

²⁴ Petition at 10.

²⁵ Petition at n. 29.



indicators of the highly competitive environment that no longer exists.²⁶ Whatever one may think of today’s competitive landscape, it is difficult to deny, despite NTIA’s efforts, that the internet offers more choice to consumers and, notably, at lower or no cost, as opposed to the subscription services of 1987.

In light of the clear evidence put forward by commenters demonstrating the variety of websites and services available to consumers – all of whom benefit from Section 230’s protections – organizations reach the conclusion that the Petition does not complain about a lack of avenues for certain viewpoints to be expressed online, but rather about an alleged lack of access to specific private platforms. In the words of App Coalition, “These facts also demonstrate that the NTIA Petition is less about a lack of access for expression of views, and is instead more properly understood as a request for access to certain, specific platforms for airing of views regardless of whether the platform wants such views on its platform.”²⁷ This is among the reasons that the Petition raises significant First Amendment concerns,²⁸ but also why one of its fundamental arguments for a change to Section 230’s protections must fail.

²⁶ *Id.* at 10.

²⁷ *Id.* See also, e.g., Comments of TechFreedom at p. 100 (discussing the First Amendment and policy concerns with the Petition’s attempt to use regulation to force “a diversity of viewpoints” not just on a particular medium, but on particular providers and how this was rejected in the context of the Fairness Doctrine).

²⁸ Numerous comments explain the First Amendment concerns in detail. In fact, TechFreedom devotes a substantial portion of its submission to this issue, primarily in Sections III-IV. See also, e.g., Comments of Consumer Technology Association at 25-27; Comments of Copia Institute at 7-8; Comments of NetChoice at 25; Comments Open Technology Institute at 5-7; Comments of Vimeo, Inc., Automattic, Inc., Reddit, Inc. at 13.



III. THE PROPOSED RULES WOULD HARM CONSUMERS.

Section 230, by its plain language, applies to “users”²⁹ of interactive computer services or consumers. Indeed, the protections that apply to users parallel those that apply to “interactive computer services” (“ICSs”). Given the structure of Section 230, it would be difficult for its provisions to mean one thing when applied to an ICS, but something different when applied to a user. Nonetheless, this is exactly what NTIA attempts to do without justification or even acknowledgement and it is not successful. As a result, the Proposed Rules would limit and condition the immunity users are accorded by the plain terms of Section 230. While this may be the most direct impact on consumers, the FCC should also take into account the wide range of consumer harms that will arise due to the Proposed Rules’ impacts on the services consumers rely upon everyday.

First, the direct impact on consumers resulting from the proposed modifications to Section 230’s protections should not be overlooked. Individual users have asserted Section 230 to avoid liability where it was clear that the only basis on which they could assert Section 230 was as a “user.”³⁰ For example, Section 230 has been asserted by users who were sued for forwarding an email, written by another, that contained defamatory statements.³¹ There are numerous other contexts where individuals who

²⁹ 47 U.S.C. § 230(c)(1) & (c)(2)(providing that “users” also benefit from the immunities).

³⁰ See, e.g., *Barrett v. Rosenthal*, 51 Cal. Rptr. 3d 55 (2006); see also, e.g., *Novins v. Cannon*, No. 09-5354 (D.N.J. April 27, 2010).

³¹ *Id.*



are clearly “users” of a service may also play the role of the creator and moderator of a forum, such as the volunteer moderators on Reddit, the operator of a blog, or owner of an online discussion group.³² As discussed previously, the moderation activities of these users already put them at risk of lawsuits.³³

The Petition makes no effort to address the impact of the Proposed Rules on the protections that Section 230 affords to users. In some instances, the Proposed Rules try to limit the impact to only providers of interactive computer services, but the Proposed Rules cannot avoid simultaneously impacting users. For example, Proposed Rule § 130.03 would define what it means to be responsible for the development of content, as used in the definition of an “information content provider” in Section 230(f)(3),³⁴ as “substantively contributing to, modifying, altering, presenting with a reasonably discernible viewpoint, commenting upon, or editorializing about content provided by another information content provider.” Thus, a user who responds to comments on their blog could lose the protections of Section 230(c)(1) for any potential illegality of a comment written by another user simply by virtue of responding to the comment. If the comment ends up being defamatory, even if the user commented to refute its allegations, the user may end up facing potential liability.

³² TechFreedom’s comments also address the importance of Section 230 to users in a wide variety of contexts, such as collaboration in an online document or on a Wikipedia entry. Comments of TechFreedom, at 90. NetChoice’s comments also note that a “one-man website” may also be an ICS citing *Batzel v. Smith*, 333 F.3d 1018, 1033 (9th Cir. 2003).

³³ See *supra* p. 3. (reddit users subjected to lawsuit)

³⁴ Petition at 55 (Despite the heading indicating the Proposed Rule is a “Clarification of Section 230(f)(2)” the text of the Proposed Rule specifies (f)(3) and the term being clarified is only used is (f)(3), thus we are treating the Proposed Rule as applicable to 230(f)(3)).



Furthermore, the Proposed Rules' definitions of the terms in Section 230(c)(2)(A) would likewise apply to moderation decisions by individual users, except potentially for "good faith." Proposed Rule § 130.02(e) attempts to define "good faith" only for "platforms," a term that is not defined in the Proposed Rules or used at all in Section 230. This suggests that NTIA is aware that it would be unreasonable to require each individual website or blog owner who has a comment section to comply with the requirements of "good faith" to maintain their Section 230 protections. Yet, the Petition does not justify how a different definition of "good faith" could apply to only a subset of the ICSs and users protected by Section 230(c)(2)(A). Section 230's structure makes it clear that there are no distinctions in either (c)(1) or (c)(2)(A) between the protections that apply to providers and those that apply to users. The Proposed Rules clearly lack an adequate basis for drawing such a distinction,³⁵ and without that distinction, they stand to create new limitations on the ability of individuals to curate their own websites, blogs, discussion groups, and other online content without facing new liability risks.

In addition to this very direct potential harm to consumers, many commenters raise concerns that the Proposed Rules would have a range of other consequences that would also harm consumers. For example,

³⁵ IA laid out in its initial comments its view that the FCC lacks the authority to promulgate rules interpreting Section 230 of any sort, but particularly where the rules adopted would conflict with the plain language of the statute. This is another example of how the Proposed Rules are at odds with Section 230's plain meaning and unsupported by legislative history. See Comments of Internet Association at 9-18.



- **Lessening the benefit from interest-based communities.** The comments of Vimeo Inc., Automattic Inc., and Reddit Inc., observe that the Proposed Rules would lessen the benefit consumers receive from participation in interest-based communities. “NTIA makes a nonsensical claim about platforms being unable to distinguish themselves in today’s environment based upon their contractual terms, but the reality is that communities of all kinds do in fact distinguish themselves based upon shared identities and interests. Yet, NTIA’s rules would discourage these communities from controlling their own messages by, among other things, setting content rules and excluding off-topic content. This decreases the value of the community and discourages people from participating in it.”³⁶ Engine’s comments also highlight this point, saying the Proposed Rules would establish “a legal framework that disincentivizes differentiation in content moderation practices as a way to appeal to unique communities of users online.”³⁷
- **Limiting consumer choice to hands off or highly curated platforms.** Public Knowledge’s comments explain the risk that the Proposed Rules would lead to platforms adopting a hands-off approach to content or else a highly curated approach, stating, “If followed, the NTIA’s view of how platforms should moderate content would turn them into something like common carriers, a concept that makes sense for some transmission, delivery and infrastructure companies but as applied to online speech platforms could lead to their being overrun with extremist content, abuse, and pornography. Or, it would turn them into dull wastelands where all user content had to be approved prior to publication, eliminating the vibrancy and dynamism of online discourse.”³⁸
- **Raising the costs for establishing an online presence.** The Internet Infrastructure Coalition predicts the Proposed Rules would likely raise costs for consumers who want to build an online presence, stating “[n]ot only would such measures stifle a great deal of Internet speech, they would raise costs and erect

³⁶ Comments of Vimeo, Inc., Automattic, Inc., Reddit, Inc. at 24.

³⁷ Comments of Engine at 15.

³⁸ See, e.g., Comments of Public Knowledge at 2; Comments of R Street at 6. See also Reply Comments of American Library Association at 6-7 (explaining how the Proposed Rules would cause a similar result for libraries).



other new barriers, particularly for small businesses and individuals seeking to build an online presence.”³⁹

IV. CONTENT MODERATION REMAINS A CHALLENGE FOR SERVICES OF ALL SIZES.

The Petition grounds its call for the FCC to promulgate rules rewriting Section 230 on the idea that, “[t]imes 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.’”⁴⁰ Indeed, the Petition devotes an entire section to “Relevant Facts and Data: Technological and Market Changes.”⁴¹ However, the Petition contains very few facts and shows a concerning misunderstanding of how content moderation works today and the many challenges it poses for ICSs. With an accurate understanding of content moderation, it is clear that Section 230’s protections remain as relevant today as they were when the law was drafted.

The Petition asserts, for example, that:

- “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

³⁹ Comments of Internet Infrastructure Coalition at 2.

⁴⁰ Petition at 4; *See also* Petition at 15 (“NTIA urges the FCC to re-examine section 230”). This language is what one would expect from a submission advocating that Congress re-examine Section 230, rather than a petition for a federal agency to engage in a rulemaking to rewrite a law passed by Congress. The many ways in which the Petition attempts to rewrite Section 230 was adequately addressed in IA’s Comments, as well as those of other commenters and need not be repeated here. *See* Comments of Internet Association at 9-23, 29-46; *see also, e.g.*, Comments of NetChoice at 10-23 (explaining how the Proposed Rules conflict with the plain language of 230); Comments of Copia Institute at 2-4; Comments of Vimeo, Inc., Automattic, Inc., Reddit, Inc. at 13- 24.

⁴¹ Petition at 9-14.



discourse, and, with machine learning and other artificial techniques, have and exercise much greater power to control and monitor content and users.”⁴²

- “[W]ith 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 lower cost, millions of posts.”⁴³

In its comments, the Center for Democracy & Technology (“CDT”) ably explains how the “factual errors in NTIA’s petition” (noted in the previous paragraph) provide another “reason to reject the petition.”⁴⁴ CDT explains,

“Artificial intelligence” is a general concept that does not describe concrete technologies currently in use in content moderation. Content moderation also requires much more than textual analysis, and automated analysis of images, video, and audio content present distinct technical challenges. Some of the largest online services do use more sophisticated machine learning classifiers as part of their systems for detecting potentially problematic content, but, as CDT and others have explained, these automated tools are prone to inaccuracies that disproportionately affect under-represented speakers. A tool designed to detect “toxicity” in online comments may not be able to parse the nuances in communication of a small, tight-knit community (such as the drag queen community) and may identify benign comments as “toxic” and warranting takedown. Automated content analysis is no substitute, legally or practically, for human evaluation of content.

The NTIA fundamentally misapprehends the state of technology and the complexities of hosting and moderating user-generated

⁴² *Id.* at 9.

⁴³ *Id.* at 4-5. It is notable that the only authority that NTIA cites for this is a report from Freedom House on use of social media for government surveillance, rather than a report focused on the use of artificial intelligence for content moderation. See Petition at n. 15.

⁴⁴ Comments of Center for Democracy & Technology at 8.



content at scale. Content filters do not, and cannot, create the presumption that intermediaries are able to reliably and effectively pre-screen user-generated content in order to detect illegal material. Any policy proposals built on that presumption are destined to fail in practice and in the courts.⁴⁵

CDT is not alone in this assessment.⁴⁶ Specifically, in the Internet Infrastructure Coalition’s comments they demonstrate how NTIA’s misunderstanding about the extent to which current content moderation tools can be used to ensure no illegal content appears on a service stating the impact on internet infrastructure companies,

NTIA glosses over the impact that its proposals would have on tech companies, including Internet infrastructure providers. It asserts that the loss of liability protection under Section 230 is acceptable in the current environment because a platform provider can use artificial intelligence technology and other high-tech tools to ensure that its service remains free of harmful content, thus controlling their liability. Unfortunately, however, NTIA is simply wrong. No technology exists that would allow operators to meaningfully limit their liability in the absence of Section 230’s protections.⁴⁷

In fact, the comments of Vimeo Inc., Automattic Inc., and Reddit Inc., correctly assert that, Section 230 was, and is, essential to the development and deployment of the types of content moderation technologies that NTIA attempts to use as a basis for limiting 230’s protections.

NTIA argues that times have changed “with artificial intelligence and automated methods of textual analysis to flag harmful content

⁴⁵ *Id.*

⁴⁶ *See, e.g.*, Comments of Engine at 5-9; Comments of Internet Infrastructure Coalition at 10; Comments of Vimeo, Inc., Automattic, Inc., Reddit, Inc. at 23.

⁴⁷ Comments of Internet Infrastructure Coalition at 10.



now available,” but fails to grasp that these very technologies were made possible because of Section 230’s robust immunities. Removing protections for editorial decisions and requiring notice and detailed reasons every time a platform removes a post precludes the operation of most automated technologies and thus returns us to a world where platforms actually do “need to manually review each individual post.”⁴⁸

Engine’s comments describe the fallacy of NTIA’s argument that, no longer a “nascent industry,”⁴⁹ the internet no longer needs Section 230’s protections in order to moderate content, stating

[T]he argument that the Internet has matured past the stage of being a “nascent industry”—and therefore can survive such a dramatic shift in the legal landscape as the fundamental rethinking of Section 230 as envisioned by the petition—fails to take into account that as Internet usage grows, so does the amount of content on the Internet that would need to be individually moderated were it not for Section 230.⁵⁰

Importantly, Engine also explains how the large investments in technology and human reviewers are out of reach for startups and small companies, thus making Section 230 protections even more important.⁵¹ Indeed, the drafters and supporters of the House amendment that became Section 230 themselves thought it was especially needed to protect larger service providers because, on account of their size, these companies could not realistically be editors of all the content available on their platform.⁵²

⁴⁸ Comments of Vimeo, Inc., Automattic, Inc., Reddit, Inc. at 23.

⁴⁹ Petition at 8.

⁵⁰ Comments of Engine at 6.

⁵¹ *Id.* at 9.

⁵² 141 Cong. Rec. at H8469-71 (Aug. 4, 1995).



V. CONCLUSION.

The FCC should deny NTIA’s Petition because it is grounded in a fundamental misunderstanding of today’s internet ecosystem and the opportunities and benefits it provides to consumers. As a result, NTIA vastly miscalculates the impact of its Proposed Rules and fails to properly account for the likely harms to the broad range of individuals and entities who benefit from Section 230’s protections. Rather than enhancing the opportunities for individuals to engage in free expression, the Proposed Rules would constrict those opportunities and limit the kinds of speech that Petition aims to further. Therefore, IA again urges the FCC to reject NTIA’s Petition and continue to allow Section 230 to be used as Congress intended through the courts and judicial interpretation.

Respectfully submitted,

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September 17, 2020



CERTIFICATE OF SERVICE

I hereby certify that, on the 17th day of September, 2020, a copy of the foregoing comments was served via FedEx upon:

Douglas Kinkoph
National Telecommunications and Information
Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, D.C. 20230
*Performing the Delegated Duties of the Assistant Secretary
for Commerce for Communications and Information*

/s/ Robert Simkins

Robert Simkins