House Judiciary Committee Upholds Liability Limitations for Internet Platforms

By Michael Plasmeier – Washington Post

Internet platforms such as Google’s YouTube will continue to be immune from liability for content posted onto them by third parties.

The House Judiciary Committee voted 6-2 to table the Internet Truth and Responsibility Act, which would repeal Section 230 of the Communications Decency Act. Rep. Lamar Smith (R-TX) and Bob. Goodlatte (R-TX) were the only two members who voted to repeal Section 230. All 3 Democrats and the 3 other Republicans on the committee voted to keep Section 230.

Proponents of Section 230 argued that repealing the act would do little to prevent objectionable content online because so much of it is hosted oversees. Instead, proponents argued that repealing the law would simply bury legitimate US corporations in a mountain of lawsuits or force providers to refrain from filtering their platforms at all. Those who thought the law should be repealed spoke about protecting Internet users from copyright infringement and pornography, as well as providing a recourse from those harmed by defamatory speech online.

Section 230 has long been a staple of the Internet world. It was originally introduced after *Stratton Oakmont vs Prodigy Services* where the New York Supreme Court found that Prodigy should be liable for all content posted to its bulletin boards, because it made some effort to monitor and remove offensive posts. That case contrasted with an earlier *Cubby vs CompuServe* case where the courts found that internet platforms are not liable for content if they do not screen it. Congress enacted Section 230 to provide a “good Samaritan” incentive for providers to filter user submissions to their websites without making them liable for missing content.

That spirit was on display as Zahavah Levine, the Chief Counsel of YouTube attributed YouTube’s success and continued existence on the law. Levine testified that over 72 hours of video are uploaded to YouTube to every minute. Levine claimed that there would be no possibly way for YouTube to effectively screen that volume of material. Sheryl Sandberg, the CEO of Facebook, spoke about the current filtering efforts of Facebook. Sandberg testified that Facebook receives “hundreds of thousands” of reports of objectionable content on its network every week. It employs an army of employees and contractors to find objectionable material and remove it.

Leslie Harris, from the Center for Democracy and Technology spoke about how Section 230 has allowed Internet companies to create their own community standards, without government involvement. This allows different organizations to target different audiences with different standards. Harris also attributes the United States’ success in Internet innovation to Section 230. Internet platforms reach massive scale; unlike with traditional publishers, there would be no way for platforms to monitor and be responsible for everything that goes over their network. Former Google Director of Public Policy Alan Davidson, who attended today’s hearing in the audience, believes that no VC would fund a company without this protection from liability.

Professor Eric Goldman, from the University of San Jose Law School warned lawmakers that were the law repealed, platform owners could still avoid liability by firing their filtering staff and not filtering. This would make the Internet platforms open grounds for all sorts of offensive materials; something which Goldman argued should strongly be avoided.

Those who spoke against Section 230 wanted the Internet platforms to do more about copyright and protecting users from illegal content.

Rep. Goodlatte spoke about how the Internet is used as a tool for a massive amount of copyright violations and was interested in ways that Internet platforms could prevent infringement. Tony Perkins, from the Family Research Council, spoke about protecting children from child pornography online, though Section 230 protects no protection to platform owners for either of these issues.

Mary McLarty, represented the trial lawyers, spoke about how identifying the individuals responsible for the offensive content is usually difficult, especially when such content is posted anonymously. Instead, McLarty argues that plaintiffs should be able to sue the big Internet companies. Indeed, Internet platforms are not even required to take down offensive content after being notified of its presence, unlike as in copyright law.

The issue is further complicated by the international nature of the Internet. Content is uploaded from around the world to websites hosted around the world. Internet executives spoke about the difficulties in distinguishing legitimate content from illegal content, especially due to legal differences around the world.

Some have questioned the freedom Internet platforms providers have to be selective, but free from liability. Internet platforms are not common carriers. They have no responsibility to carry all content that is posted to them. This is unlike telephone companies, who are not liable for content spoken over their networks, but must also provide services to everyone.

Ultimately the Committee chose to not allow any amendments and to simply allow Section 230 to stand as-is.