

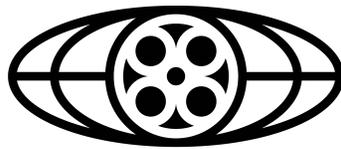
Before the House Committee on Energy & Commerce

**Subcommittees on
Communications & Technology
and
Consumer Protection & Commerce**

Hearing on:
“Fostering a Healthier Internet to Protect Consumers”

Oct. 16, 2019

Statement for the Record



MPA

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At today's hearing on "Fostering a Healthier Internet to Protect Consumers," the House Energy and Commerce Committee will begin a reexamination of Section 230 of the Communications Act. When Congress originally passed Section 230 in 1996, its goals were twofold: 1) encouraging online platforms to proactively limit the availability of harmful content on their services; and 2) helping then-nascent online services grow, based on the belief they needed protection from liability for harmful content their users posted that they likely did not have the resources or technology to curtail. Although Section 230 does not shield platforms for copyright infringement by their users, Section 512 of the Copyright Act does, and was enacted in 1998 under a similar rationale as Section 230, while preserving some aspects of traditional secondary liability for intermediaries.

Critics of the online liability limitations argue that platforms are reaping the benefits of immunity without living up to Congress' expectations that they take reasonable steps to deter undesirable behavior. This is not an easy problem to solve, and we don't pretend to have all the answers. While the discussion is likely to be complex and involve a variety of proposals, the good news is that there are tools available today to begin addressing this issue while Congress conducts its reexamination.

Most internet intermediaries and user-generated content platforms reserve the right in their existing terms of service to remove unlawful or otherwise harmful content and to terminate the accounts of users who enlist their services for illegal activity. Calling on all online intermediaries and user-generated content platforms to take commercially reasonable steps to pro-actively enforce their policies regarding harmful and illegal conduct would go a long way toward curbing illicit activity online. Enforcing such policies could happen now, regardless of where the Committee's review leads. Moreover, companies can join forces with qualified private sector and public interest organizations that have raised concerns about harms stemming from third party content, and that can help craft effective tools and practices for addressing illegal activity.

For example, the MPA helps Visa, MasterCard, and PayPal identify pirate websites using their financial networks to profit off the mass, unauthorized distribution of entire movies and television episodes. Once identified, Visa, Mastercard, and PayPal can enforce their terms that prohibit use of their services to facilitate such activity, and terminate the accounts of wrongdoers. We similarly help Amazon, eBay, and Alibaba find sellers using their online marketplaces to peddle devices configured and marketed to access pirated content. We also work with Donuts and Radix, providers of newer top-level domains such as ".movie" and ".online," so that they can enforce their own rules against use of those domains for piracy. Trusted-notifier programs and other enforcement practices can help combat not just piracy, but a whole host of clearly illegal conduct.

A few companies have recently developed systems to proactively identify posts promoting hate and violence, and have invoked their terms of service to terminate accounts of those engaged in such activity, although not before wrestling with concerns over the impact on expression. If online intermediaries and user-generated content platforms can proactively identify such content and terminate service in these cases, surely they can terminate service and take other effective action in cases of clearly illegal conduct, which present brighter lines and don't raise the same speech concerns. Development and strong enforcement of such policies is

consistent not only with the original bargain of Section 230, but also with the claims of online companies that they should be allowed to self-regulate.

In the meantime, as Congress reexamines online liability limitations, the United States should refrain from including such limitations in future trade agreements, which runs the risk of freezing the current framework in place. Indeed, defenders of Section 230 have explicitly cited tying Congress' hands as one reason for including online liability limitations in trade agreements. Further, Congress did not include Section 230 in Trade Promotion Authority in 2015. We support the US-Mexico-Canada trade agreement because, on the whole, it improves on the copyright policies included in NAFTA, which was adopted prior to the internet age. But including online liability limitations in future trade agreements could usurp Congress' prerogatives. The United States should allow Congress' conversation to run its course before exporting the limitations, as well as the problems they may be exacerbating.