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Free Speech in the Internet Era: Reviewing Policies Seeking to Modify Section 230 of the Communications Decency Act

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Section 230 of the Communications Decency Act (CDA) has for over two decades provided “interactive computer services” a legal liability shield for defamatory or otherwise actionable user-generated content posted on their platforms and, for lawsuits stemming over unequal enforcement of their content policies, provided enforcement efforts are taken in “good faith.” This law, passed in the early days of the Internet, incubated the Internet and social media, giving it the regulatory freedom it needed to grow into a platform where hundreds of millions of Americans can exchange ideas and engage in political and social discourse.

Yet, for all the good Section 230 did, the negative implications of the expanding role social media platforms in American political life have spurred calls for change. Concerned parties often cite alleged bias by social media companies in enforcing community standards and moderating content, as well as the role of social media platforms in political radicalization and the spread of misinformation. Proposals for change differ greatly, but at their heart, they involve the balancing of three incredibly important interests: the interest of the government to limit the spread of dangerous content, the interest of the people to engage in “free speech,” and the freedom of companies to regulate their products as they see fit.

This article first examines the current state of the law, and then analyses the ultimate extent to which potentially objectionable, user-generated online content may be regulated within the context of constitutional protections for free speech. Next, it analyzes the potential implications—legal, economic, and social—of popular policies seeking to amend Section 230 and more broadly regulate “interactive computer services,” and their effects on constitutional protections of free speech and of a free press. Finally, based on these analyses, it recommends changes for Congress to pursue.