

A Comparison of the PACT Act and the Online Freedom And Viewpoint Diversity Act in Regards to Section 230

Wednesday, September 16th, 2020

By Clifton Paul Robinson

Recently, there has been a growing controversial debate in regards to Section 230 of the Communications Decency Act (CDA)¹. This is one of the landmark acts that has shaped how the Internet looks today. Having also been dubbed the “twenty-six words that created the internet,” this act is one of the main reasons social media is how it is currently. At the core of Section 230, it states:

“No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”²

What does this mean exactly? This means that social media companies, such as Facebook and Twitter, are not liable for the content of their user’s posts. While this law has allowed the tech industry to flourish without having to worry about being held accountable for third-party content, critics have recently been taking aim. They are saying that companies are either not doing enough to fight the harmful content being posted or that they are going too far with what is being censored.³ With complaints saying both too much and not enough, politicians are starting to go back to the drawing board to change Section 230 to work with today’s Internet.

There are currently two acts being proposed, the Online Freedoms and Viewpoint Diversity Act and the Platform Accountability and Consumer Transparency (PACT) Act. Both acts have recently been introduced ever since the Executive Order by Donald Trump in May

¹ This is a common name for Title V of the Telecommunications Act of 1996.

² 47 U.S.C. § 230

³ Siripurapu, A. (2020, June 4). Trump's Executive Order: What to Know About Section 230. Retrieved September 11, 2020, from <https://www.cfr.org/in-brief/trumps-executive-order-what-know-about-section-230>

2020 that aimed at limiting the legal protection in Section 230. Both of these acts take action against the CDA, just with different methods in altering it. Before looking at each of these acts, it is important to look at the history of both the Telecommunications Act of 1996 and the Communications Decency Act.

The Telecommunications Act of 1996⁴ was the first time there was a significant change to telecommunication laws in the United States in over 60 years, where congress amended the Communications Act of 1934.⁵ This also marked the first time that the Internet was included as “broadcasting”. This was a major update to bring telecommunication to modern times in 1996. At this point, the Internet has only been around for three years, being given to the public in April 1993.⁶ At the time no one ever expected that the Internet would explode to the size it is today and the reliance our civilization has with it.

The Communications Decency Act was just one part of a seven-part act, but today it is potentially the most important and definitely the most controversial part of the act. By offering website publishers immunity from third-party content published on their sites, it allowed companies to take risks, which allowed for social media to take shape into what it is today (*for better or worse*). The expansion of the Internet, especially in the United States, can partially give credit to Section 230, but that credit does not come without blame. The Internet, specifically social media outlets, has become rampant with misinformation, hate speech, and cyberbullying, with not a lot of accountability due to the immunity the CDA provides.

⁴ **Important NAY Votes:** Rep. Bernie Sanders (I-VT), Rep. Jerold Nadler (D-NY), Sen. John McCain (R-AZ), Sen. Patrick Leahy (D-VT)

Important YAY Votes: Rep. Lindsey Graham (R-SC), Rep. Roger Wicker (R-MS), Rep. Nancy Pelosi (D-CA), Sen. Joe Biden (D-DE), Sen. Mitch McConnell (R-KY)

⁵ 47 U.S.C.: Telegraphy

⁶ Grossman, D. (2018, April 30). On This Day 25 Years Ago, the Web Became Public Domain. Retrieved September 11, 2020, from <https://www.popularmechanics.com/culture/web/a20104417/www-public-domain/>

It would be assumed that when both political parties see an issue with a specific law that there would be an overwhelming amount of bipartisan support to change it, but here, that is not the case. The issue goes back to the complaints given earlier, most of the Democratic Party believes that the tech companies are hiding behind Section 230 to “avoid doing more to combat hate speech and disinformation online”. While some in the Republican Party, including the President, believes that it is shielding tech companies from the “consequences for censoring conservative voices”.⁷ This begs the question, is there a bias on social media against conservatives? There has been a lot of research over the past several years that shows there is not.

In 2019, researchers at Northeastern University, the University of Southern California, and the public-interest advocacy group Upturn revealed that Facebook’s ad delivery aligns with race and gender stereotypes, even when advertisers ask for the ads to be exposed to a large, inclusive audience.⁸ This shows that there is a general bias, but there has been more focused research on the political spectrum. A study from April 2019 by Media Matters for America conducted a research experiment over 37 weeks. The author’s measured user engagement across both left- and right-leaning pages. They found that “right-leaning pages earned on average about 372,000 weekly interactions and left-leaning pages earned on average about 369,000 weekly interactions”.⁹ Their research actually determined that right-leaning pages benefit slightly more on Facebook. It was determined that the extreme voices on either side are the groups with a bias

⁷ Siripurapu, A. (2020, June 4). Trump's Executive Order: What to Know About Section 230. Retrieved September 11, 2020, from <https://www.cfr.org/in-brief/trumps-executive-order-what-know-about-section-230>

⁸ Ali, Muhammad et al. “Discrimination through Optimization.” Proceedings of the ACM on Human-Computer Interaction 3.CSCW (2019): 1–30. Crossref. Web.

⁹ Martinez, W. (n.d.). Study: Facebook is still not censoring conservatives. Retrieved September 11, 2020, from <https://www.mediamatters.org/facebook/study-facebook-still-not-censoring-conservatives>

against them, but that is because what they post is against many online policies or classifies as misinformation or hate speech.

This leads directly to the two acts that aim to change Section 230. The Online Freedoms and Viewpoint Diversity Act is the more direct and controversial of the two acts proposed. This act has been proposed by Senators Roger Wicker (R-MS), Lindsey Graham (R-SC), and Marsha Blackburn (R-TN) and aims to tackle the issue of social media companies censoring and violating the First Amendment. This act would serve as a general blanket to create concrete terms in Section 230 and promote “full and fair” discourse online.¹⁰ There are many issues here, one of which is that it is a bill only supported by some of the GOP senators.

This legislation has also met some pushback from the Internet Association, an American lobbying group, which represents internet companies. Their Deputy Counsel Elizabeth Banker quickly released a statement saying:

“Section 230’s otherwise objectionable clause underpins crucial content moderation efforts that make their platforms safer for everyone. Eliminating that clause will make it harder, not easier, for online services to remove content like misinformation, platform manipulation, or bullying that’s neither illegal nor in the bill’s new description of allowable moderation. This bill would also hamper platforms from adapting to future moderation challenges.

“We also have serious First Amendment concerns with this bill. This bill would limit the ability of private online platforms and services, including small forums

¹⁰ MIR20F73 W9K

for schools, churches, and local sports leagues, to set and enforce rules for their communities.”¹¹

In short, this legislation seems to be short-sighted and would end up causing more issues than it would solve. On top of that, there seems to be several First Amendment violations that would not hold up in a court of law. It is interesting to see the hypocrisy in this proposed legislation as the same senators talked about the issue of censorship while submitting something that would violate the First Amendment.

The second piece of legislation introduced is the Platform Accountability and Consumer Transparency Act, the PACT act for short. This was proposed by Senators Brian Schatz (D-HI), the ranking member of the Subcommittee on Communications, Technology, Innovation and the Internet, and John Thune¹² (R-SD), the chairman of the Subcommittee on Communications, Technology, Innovation, and the Internet. This bipartisan bill plans to strengthen transparency in online platforms as well as hold companies accountable for content that is either illegal or against their policy. It was described as an “update” to Section 230 because this section seems to be “ripe” for reform. Compared to the Online Freedom and Viewpoint Diversity Act, the PACT act is much more defined and well thought out, however, it is not ready to become law.

First, it is important to look at what the PACT act would do. Some notable issues it would tackle would be that:¹³

- It requires online platforms to explain their content moderation practices.

¹¹ The Internet Association. (2020, September 8). Statement In Response To The Introduction Of The Online Freedom And Viewpoint Diversity Act [Press release]. Retrieved from [here](#)

¹² Senator Thune is also the current Senate Majority Whip.

¹³ S.4066

- Have companies share their guidelines with the National Institute of Standards and Technology.
- Give process protection to consumers.
- Allow state Attorney General's to enforce Federal civil laws.
- Give protection to whistleblowers at these companies in the case that there are violations.

Those are just several of the major points. The focus of this bill is based on transparency and accountability, which is desperately needed in today's Internet climate.

There have been some key issues raised with this legislation as well. The first is that this bill combines ideas together and focuses on sweeping reform across the board. There's a big issue there, every company is different and on the Internet, there are smaller and local companies that could not afford some of these changes that would be put into place. If the goal is to hold these companies accountable, getting rid of the upcoming competition is not the best way to do that. Also, combining ideas into a single bill, especially as large as these two, does not seem like the best way to pass this. The PACT act should be split into two different bills: the Platform Accountability Act and the Consumer Transparency Act. This would allow for there to be a specific focus on each area instead of watering down each part to make the bill work.

When it comes to breaking down new bills, a 20-page paper could easily come out of both of them, but at both of their current states, would not be the best. The PACT Act was introduced on June 24th, 2020 and the current status is: "*Read twice and referred to the Committee on Commerce, Science, and Transportation*". Whereas the Online Freedom and Viewpoint Diversity Act was just introduced on September 8th, 2020 and the current status is

also: *“Read twice and referred to the Committee on Commerce, Science, and Transportation”*.

Both of these bills may continue with major amendments or they might both die in committee.

With the 2020 Presidential Election right around the corner, these bills may not even matter. Former Vice President Joe Biden wants to completely revoke Section 230 and President Donald Trump has already attempted to take executive action against it. While the future of these bills are uncertain, they start the talking point on a federal level of Internet reform. The only way this issue will get solved is if a mutual agreement can be met that allows freedom on the Internet while also making it a safer space. As we move deeper into the Age of the Internet, a decision needs to be made about how we improve it, not by how we hide it.