

Mark R. Warner

US Senator from the Commonwealth of Virginia

The SAFE TECH Act Frequently Asked Questions

Q: What does Section 230 of the Communications Decency Act do?

A: Section 230 grants two forms of immunity to “interactive computer services”—a term that covers a broad range of companies spanning internet platforms like Facebook and YouTube to ISPs, web hosting services, and others.

- Section 230(c)(1) grants immunity to interactive computer services for “information” provided by third parties. It is this provision that ensures Facebook is not liable for a defamatory statement posted by one of its users. Courts have interpreted the word “information” broadly to cover commercial activity and other online (or online-enabled) conduct.
- Section 230(c)(2) grants immunity to interactive computer services for taking action to remove content or restrict access to it if they consider the content to be “obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable.” This provision allows YouTube to take down videos claiming the 2020 presidential election was fraudulent without fear of being sued by the users posting the videos. It also empowers interactive computer service providers to engage in moderation without fear that their moderation will be used to classify them as publishers of the third-party content.

Q: Why was Section 230 enacted?

A: Enacted in 1996 as a largely-overlooked amendment to the larger Telecommunications Act of 1996, Section 230 was a response to the New York state court decision *Stratton Oakmont v. Prodigy*. In that case, the court found Prodigy liable for a defamatory statement posted by an unknown user to one of its online bulletin boards. The court reasoned that because Prodigy moderated its bulletin boards to remove content it deemed offensive or in bad taste, it was akin to a publisher and therefore responsible for all content posted by third parties.

Section 230 was a rebuke of that decision and ensured that no “interactive computer service” would be treated as the publisher or speaker of content provided by a third party, even if they engaged in moderation activity.

Q: Does Section 230 currently contain any exceptions?

A: From its inception, Section 230 contained exceptions for federal criminal law, intellectual property law, and the Communications Privacy Act of 1986. In 2018, the Stop Enabling Sex Traffickers Act (“SESTA”) and Allow States and Victims to Fight Online Sex Trafficking Act (“FOSTA”) were signed into law, creating an additional exception for sex trafficking laws. Over time, Congress has considered additional exceptions to Section 230, including for child sexual abuse material (“CSAM”).

Q: What does the SAFE TECH Act do?

A: The SAFE TECH Act reforms Section 230 to address key areas in which the law has been abused by platforms to evade responsibility for real-world harms they have directly enabled. Specifically, the bill makes clear that Section 230:

- **Doesn’t apply to ads or other paid content** – ensuring that platforms cannot continue to profit as their services are used to target vulnerable consumers;
- **Doesn’t bar injunctive relief** – allowing victims to seek court orders where misuse of a provider’s services is likely to cause irreparable harm;
- **Doesn’t impair enforcement of civil rights laws** – maintaining the vital and hard-fought protections from discrimination even when activities or services are mediated by internet platforms;
- **Doesn’t interfere with laws that address stalking/cyber-stalking or harassment and intimidation on the basis of protected classes**– ensuring that victims of abuse and targeted harassment can hold platforms accountable when they directly enable harmful activity;
- **Doesn’t bar wrongful death actions** – allowing the family of a decedent to bring suit against platforms where they may have directly contributed to a loss of life;
- **Doesn’t bar suits under the Alien Tort Claims Act** – potentially allowing victims of platform-enabled human rights violations abroad (like the survivors of the Rohingya genocide) to seek redress in U.S. courts against U.S.-based platforms.

Q: Won't removing Section 230 immunity bring back the perverse incentive structure Section 230 was meant to address and actually lead to less content moderation?

A: No. Section 230 effectively cut off the development of case law for the past 25 years based on the flawed reasoning of a single state court judge. By peeling back Section 230 immunity for particularly serious harms—such as civil rights violations, stalking, and harassment—internet platforms will be incentivized to ramp up their address problems in these areas, problems that have otherwise been allowed to fester and grow without exposure to potential liability. These reforms do not render ICS providers liable for all – or even most – third-party content, including where they engage in moderation activity. Nor do these reforms alter the already-steep hill plaintiffs must already climb. Rather, these reforms allow victims an opportunity to seek redress where they can potentially show that a platform has directly contributed to their injury.

Q: Will making internet platforms liable for third-party content lead internet platforms to overreach in their content moderation efforts thereby chilling speech from the very groups you're looking to protect?

A: No. The SAFE TECH Act was developed in partnership with, and has the strong support of, a wide array of civil rights groups. We need to recognize that threats, harassment, and targeted intimidation silence the voices of far too many racial minorities, women, and other marginalized groups by driving them from social media and other online platforms. Under the status quo, platforms have been able to ignore these harms – even where their continued inaction, and even their product design, contributes to these injustices. As these online harms spread to the real world—in places like Charlottesville, Kenosha, and at the U.S. Capitol—their negative impact has only become more unmistakable. The SAFE TECH Act simply allows victims an opportunity to hold platforms accountable when their deliberate inaction or product design decisions produce real-world harm, making the online world a more open and welcoming environment for all to participate.

Q: Will exposing small tech companies and startups to liability and increased litigation costs drive them out of business and simply entrench the dominant player (e.g., Google, Facebook)?

A: This concern is gravely exaggerated. As an initial matter, smaller players do not have the reach of the Googles and Facebooks of the world and, as a result, are less likely to cause significant harm. Moreover, potential plaintiffs are unlikely to bring an action against a small tech company or startups out of fear being able

to collect sufficient damages to make the effort and cost of litigation worthwhile. Indeed, in many cases plaintiffs' attorneys would not even take these cases given the low likelihood of meaningful damages. In addition, a string of judicial decisions on standing requirements over the last 10 years, along with a range of tort reforms enacted by state legislatures (including anti-SLAPP laws to penalize frivolous or bad faith lawsuits), have significantly altered the legal landscape since Section 230 was enacted in 1996.

More importantly, things like protecting civil rights and preventing harassment *should* be built into internet platforms **by design**. Today's online giants claim that their massive scale makes it too difficult to effectively moderate content – a social cost borne by users and vulnerable communities. Had these companies been exposed to potential liability from their inception, in many cases they would have designed their platforms to address (and avert) misuse and harm stemming from them.

Q: What is the scope of the carve-out for paid content? Does it cover anything beyond paid advertisements?

A: The SAFE TECH Act makes clear that Section 230 immunity does not apply to **any** paid content. This would include advertisements as well as things like marketplace listings.

Q: Why is a carve-out for antitrust laws necessary?

A: Internet platforms and other tech companies have pushed the bounds of Section 230 in an effort to immunize themselves from all manner of activity. Just last year, a leading cyber-security firm claimed Section 230 immunized it against a claim it had engaged in anticompetitive conduct to harm a competitor and pursued its claim all the way to the Supreme Court. With federal and state antitrust enforcers turning their eyes to dominant technology platforms (including the ways in which they shut off access to downstream competitors based on anti-competitive motives), it is important to make clear that Section 230 does not provide immunity for anticompetitive conduct.

Q: Will the SAFE TECH Act break the internet?

A: No! The internet was a far different place when Section 230 was passed. The scope, influence, and impact of modern internet platforms were unimaginable in 1996. Like all regulation, Section 230 must be updated to address the current state of affairs – including the unintended consequences of the law. The SAFE

TECH Act brings Section 230 into the modern age by addressing those areas in which the law has been abused by platforms—such as civil rights, stalking, and harassment—in a targeted way. It is also important to remember, that even with the changes proposed in the SAFE TECH Act, Section 230 does not impose liability on anyone. There must still be a violation of some law and plaintiffs must still prove causation, harm, and damages. And the application of that law to an internet platform still cannot run afoul of the First Amendment.