



6 MYTHS ABOUT SECTION 230

One of the cornerstones of the modern Internet economy is a federal telecommunications law known as Section 230. Enacted with the Communications Decency Act in 1996, Section 230 provides legal and regulatory certainty for websites and online businesses that they will not be held liable for the online activities of third parties. By limiting the liability of online services for misconduct by third-party users, Section 230 has created a robust Internet ecosystem where commerce, innovation, and free expression thrive – while enabling providers to take creative and aggressive steps to fight online abuse. Several myths exist about Section 230, however.

Myth: *“If there’s bad content online, then it’s because bad companies want to profit from it.”* Some have suggested that Section 230 should be repealed, arguing that it allows Internet services to benefit from the misconduct of others.

▶ **Fact:** Internet services do not benefit from online misconduct. Lawful businesses have no desire to facilitate illegal activity, and are able to aggressively seek out and terminate the access of bad actors – thanks to the legal protections in Section 230 for ‘good Samaritan’ actions on objectionable content. Online services already have strong incentives to cut off abuse, since misconduct and illegal activity are also bad for business. Users and advertisers don’t want to share the same space as bad actors.

Myth: *“Section 230 means Internet companies don’t fight terrible online behavior, like human trafficking.”* Detractors of Section 230 have argued that because of the safe harbor, Internet companies make no effort to fight criminal activity online.

▶ **Fact:** Today, major Internet companies collaborate closely with each other, with civil society, and with governments to fight abusive and criminal behavior online, including the facilitation of human trafficking. Weakening Section 230 would actually make it harder for responsible Internet companies to proactively protect people online, because Section 230 enables these responsible companies to build and experiment with solutions to address the worst online activities without facing the risk of liability for their anti-abuse efforts.

Myth: *“Section 230 is a ‘loophole’ that should be closed.”* Some critics of Section 230 think it was an unintentional oversight or outdated measure that limits Internet services’ liability when bad actors use the Internet.

▶ **Fact:** Section 230 is an economically critical protection that does exactly what Congress intended. Fearing that whenever a bad actor used the Internet, courts might try to ‘shoot the messenger,’ Congress explicitly enacted Section 230 “to promote the continued development of the Internet” by limiting liability. Withdrawing protections like Section 230 could cost the U.S. economy 425,000 jobs, while harming small businesses that rely on consumer-review sites and social media to build their brand and sell abroad.



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Myth: *“Section 230 is a shield for all criminal activity.”* A recent documentary mistakenly reported that an online service known as Backpage, allegedly linked to sex trafficking, avoided Justice Department prosecution by invoking Section 230.

▶ **Fact:** Section 230 has no effect on federal criminal law. An online service that violates federal criminal law can still be prosecuted. Despite the documentary’s claims, Justice Department prosecutors could pursue Backpage and similar companies if they choose to.

Myth: *“There’s no harm in weakening Section 230 – we’ve amended it plenty of times before.”* Proponents of amending Section 230 often point to the fact that it’s been amended before as a basis for narrowing its liability protections today.

▶ **Fact:** While Congress has made changes to Section 230 in the past, on several occasions it has considerably broadened its protections, including the SPEECH Act and the recent Defend Trade Secrets Act. Just last year, Congress reaffirmed that exceptions to Section 230 should remain narrow. Unlike the clear-cut exceptions for federal criminal law and intellectual property, efforts to include more ambiguous requirements in Section 230 would be unprecedented. An important part of Section 230’s effectiveness is its simplicity, which provides legal certainty to service providers – and clarity to judges.

Myth: *“All websites could just have algorithms to block all bad content – if they wanted to.”* Because some services can filter for specific types of content, and others may filter for copyright-protected material when “hashes” are provided by rightsholders, some observers believe filtering for all types of unlawful content must also be possible.

▶ **Fact:** While algorithms can help filter for certain types of content, it is not technologically possible for services to filter all types of unlawful content – particularly where content is lawful in some contexts but not in others. Filtering is not the right solution, particularly where services are already developing more effective tools for fighting real harms and are voluntarily taking down unlawful content in a timely manner after receiving notice. In addition, a filtering requirement would also harm startups and new competitors that lack the technical and legal resources to filter content.

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