Disincentivizing Internet Service Censorship of Online Users and Restrictions on Speech and Expression (DISCOURSE) Act

Senator Marco Rubio

Background: Section 230 of the Communications Decency Act (CDA) was intended to enable internet companies to host third party content and to engage in targeted moderation of the worst content without being treated as "publishers" which are generally held accountable for the content that appears in its publication. The Congressional findings to Section 230 state that "The Internet and other interactive computer services offer a forum for a true diversity of political discourse..." Since the passage of the CDA nearly 25 years ago, internet companies have developed from nascent, scrappy startups that required the protections afforded by Section 230 into some of the largest firms on the planet. In addition to changes in size, dominant internet companies also changed their missions. Far from the neutral bulletin boards of the past, today's tech giants employ complex algorithms and teams of content moderators, often located in foreign countries, to manipulate online discourse.

The legal safe haven meant to provide companies with the flexibility to engage in "private blocking and screening of offensive material" has created an environment where the gatekeepers of online speech receive special immunities with little regard for their behavior. Big Tech companies routinely ignore the statute's modest obligations, such as to inform users of screening options and parental controls while taking full advantage of its protections. One of the unintended consequences of Section 230 as drafted is that tech companies shut down points of view out of favor with Silicon Valley elites while being treated as carriers who bear virtually no responsibility for the messages they either amplify or exclude. The time has come to revisit 230.

The Solution: For the largest companies, Section 230 will only apply in cases where firms act with viewpoint neutrality. When a major tech firm engages in systemically biased content moderation activities or algorithmic amplification, it clearly has a hand in developing content. However, the law as it currently stands does not reflect this. The DISCOURSE Act updates the statute so that when a market dominant firm actively promotes or censors certain material or viewpoints it no longer receives protections. The bill also limits 230 immunities for large corporations that do not live up to the statute's current obligations. Notably, this legislation does not prohibit any behavior that companies wish to engage in. It simply limits the extent to which the special protections offered under 230 apply.

Example #1: A market-leading video hosting and sharing site routinely blocks and prevents sharing of pro-life videos on its platform to the point that there is an established pattern of this practice. The video hosting website will then be considered to be engaged in the development of content and treated as an information content provider, liable for the speech on its platform.

Example #2: A dominant social media site takes content posted by users and, through the use of algorithms, targets this content at other users. The site is now considered to have a hand in the development in this content, since without the active participation of the site, the content would have reached a far smaller audience. The site no longer receives immunities for user originated content.