To amend section 230 of the Communications Act of 1934 to correct shortcomings in how that section addresses content moderation, content creation and development, and content distribution.

IN THE SENATE OF THE UNITED STATES

Mr. Rubio introduced the following bill; which was read twice and referred to the Committee on ______________.

A BILL

To amend section 230 of the Communications Act of 1934 to correct shortcomings in how that section addresses content moderation, content creation and development, and content distribution.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Disincentivizing Internet Service Censorship of Online Users and Restrictions on Speech and Expression Act” or the “DISCOURSE Act”.

SEC. 2. CONTENT MODERATION, CREATION AND DEVELOPMENT, AND DISTRIBUTION.

(a) Treatment as Publisher or Speaker Contingent on Content Management Practices.—Section 230 of the Communications Act of 1934 (47 U.S.C. 230) is amended—

(1) in subsection (c)(1)—

(A) by striking “No provider” and inserting the following:

“(A) In general.—Subject to subparagraph (B), no provider”; and

(B) by adding at the end the following:

“(B) Notification of Parental Control Protections.—Subparagraph (A) shall not apply to a provider of an interactive computer service with a dominant market share that violates subsection (d).”; and

(2) in subsection (f)—

(A) in paragraph (3)—

(i) by striking “The term” and inserting the following:

“(A) In general.—The term”; and

(ii) by adding at the end the following:
“(B) CONTENT MODERATION.—If an interactive computer service provider with a dominant market share—

“(i) engages in a content moderation activity that reasonably appears to express, promote, or suppress a discernible viewpoint for a reason that is not protected from liability under subsection (c)(2), including reducing or eliminating the ability of an information content provider to earn revenue, with respect to any information, the interactive computer service provider shall be deemed to be an information content provider with respect to that information; or

“(ii) engages in a pattern or practice of content moderation activity that reasonably appears to express, promote, or suppress a discernible viewpoint for a reason that is not protected from liability under subsection (c)(2), including reducing or eliminating the ability of an information content provider to earn revenue, the interactive computer service provider shall be deemed to be an information content pro-
vider with respect to all information that is
provided through the interactive computer
service.

“(C) USE OF TARGETED ALGORITHMIC AM-
PLIFICATION.—

“(i) IN GENERAL.—If an interactive
computer service provider with a dominant
market share—

“(I) amplifies information pro-
vided by an information content pro-
vider by using an algorithm or other
automated computer process to target
the information directly to users with-
out the request of a sending or receiv-
ing user, the interactive computer
service provider shall be deemed to be
an information content provider with
respect to that information; or

“(II) engages in a pattern or
practice of amplifying information
provided by an information content
provider by using an algorithm or
other automated computer process to
target the information directly to
users without the request of a sending
or receiving user, the interactive computer service provider shall be deemed to be an information content provider with respect to all information that is provided through the interactive computer service.

“(ii) EXCEPTIONS.—Clause (i) shall not apply to the use of an algorithm or other computer process to—

“(I) amplify or target directly to a user any information that is the result of a search function performed by the user; or

“(II) sort data chronologically or alphabetically.

“(D) INFORMATION CREATION OR DEVELOPMENT.—If an interactive computer service provider with a dominant market share—

“(i) solicits, comments upon, funds, or affirmatively and substantively contributes to, modifies, or alters information provided by an information content provider, the interactive computer service provider shall be deemed to be an information content
provider with respect to that information;

or

“(ii) engages in a pattern or practice of soliciting, commenting upon, funding, or affirmatively and substantively contributing to, modifying, or altering information provided by an information content provider, the interactive computer service provider shall be deemed to be an information content provider with respect to all information that is provided through the interactive computer service.”; and

(B) by adding at the end the following:

“(5) CONTENT MODERATION ACTIVITY.—The term ‘content moderation activity’ means editing, deleting, throttling, limiting the reach of, reducing or eliminating the ability of an information content provider to earn revenue from, or commenting upon, information provided by an information content provider, or terminating or limiting an account or usership, if the activity is based on content-based criteria.

“(6) PATTERN OR PRACTICE.—The term ‘pattern or practice’ means any formal or informal policy or rule, whether created by a human or gen-
erated by a computer, as applied or used by an
interactive computer service provider.”.

(b) CLARIFYING CATEGORIES OF OBJECTIONABLE
MATERIAL.—Section 230(c)(2) of the Communications
Act of 1934 (47 U.S.C. 230(c)(2)) is amended—

(1) in subparagraph (A)—

(A) by striking “considers to be” and in-
serting “has an objectively reasonable belief is”;

(B) by inserting “promoting terrorism or
violent extremism,” after “violent,”; and

(C) by striking “or otherwise objection-
able” and inserting “promoting self-harm, or
unlawful”; and

(2) in subparagraph (B), by striking “para-
graph (1)” and inserting “subparagraph (A)”.

(e) RELIGIOUS LIBERTY EXCEPTION TO CIVIL LI-
ABILITY PROTECTIONS.—Section 230(c)(2) of the Com-
 munications Act of 1934 (47 U.S.C. 230(c)(2)), as amend-
ed by subsection (b), is amended—

(1) by redesignating subparagraphs (A) and
(B) as clauses (i) and (ii), respectively, and adjust-
ing the margins accordingly;

(2) by striking “No provider” and inserting the
following:
“(A) IN GENERAL.—Except as provided in
subparagraph (B), no provider”;
(3) in subparagraph (A)(ii), as so designated,
by striking “subparagraph (A)” and inserting
“clause (i)”; and
(4) by adding at the end the following:
“(B) RELIGIOUS LIBERTY EXCEPTION.—
Subparagraph (A) shall not apply to any action
taken with respect to religious material in a
manner that burdens the exercise of religion, as
defined in section 5 of the Religious Freedom

(d) DISCLOSURE OF CONTENT MANAGEMENT MECHANISMS AND PRACTICES.—Section 230(d) of the Communications Act of 1934 (47 U.S.C. 230(d)) is amended—
(1) by striking “A provider” and inserting the
following:
“(1) PARENTAL CONTROL PROTECTIONS.—A
provider”; and
(2) by adding at the end the following:
“(2) DISCLOSURE OF CONTENT MANAGEMENT
MECHANISMS AND PRACTICES.—
“(A) IN GENERAL.—A provider of an
interactive computer service that provides the
service through a mass-market offering to the public shall publicly disclose accurate information regarding the content moderation activity of the service, including editing, deleting, throttling, limiting the reach of, reducing or eliminating the ability of an information content provider to earn revenue from, or commenting upon, information provided by an information content provider, terminating or limiting an account or usership, and any other content moderation, promotion, and other curation practices, sufficient to enable—

“(i) consumers to make informed choices regarding the purchase and use of the service; and

“(ii) entrepreneurs and other small businesses to develop, market, and maintain offerings by means of the service.

“(B) MANNER OF DISCLOSURE.—A provider of an interactive computer service shall make the disclosure under subparagraph (A)—

“(i) through a publicly available, easily accessible website; or

“(ii) by submitting the information described in that subparagraph to the
(e) Clarifying That Immunity Is an Affirmative Defense.—Section 230(c)(1) of the Communications Act of 1934 (47 U.S.C. 230(c)(1)), as amended by subsection (a)(1), is amended—

(1) in subparagraph (A), as so designated, by striking “subparagraph (B)” and inserting “subparagraphs (B) and (C)”;

(2) by adding at the end the following:

“(C) Affirmative Defense.—In a criminal or civil action against a provider or user of an interactive computer service that treats the provider or user as the publisher or speaker of any information, the provider or user shall bear the burden of proving that the provider or user is not an information content provider with respect to that information for purposes of subparagraph (A).”