

**Subcommittee on Communications and Technology of the  
U.S. House of Representatives Committee on Energy and Commerce**  
Hearing on “Holding Big Tech Accountable: Targeted Reforms to Tech’s Legal Immunity”  
Wednesday, December 1, 2021

**Karen Kornbluh Written Testimony**

Thank you Subcommittee Chairman Doyle, Ranking Member Latta, Committee Chairman Pallone, Ranking Member Rodgers, and Committee members for the opportunity to testify on targeted reforms to increase social media accountability.

I direct the Digital Innovation and Democracy Initiative at the German Marshall Fund of the U.S., where I am also a Senior Fellow. Previously, I served as United States Ambassador to the Organization for Economic Cooperation and Development.

**I’d like to stress three points today:**

1. The internet has changed dramatically since the mid-1990s when the rules of the Internet were written for a fledgling medium. This policy framework must be clarified for a new reality.
2. Section 230(c)(1) must be clarified so that it does not neuter other important protections.
3. In addition, regulations must be updated to limit harms and protect free expression.

**The policy framework is out of date for the social media on which Americans spend much of our lives.**

Section 230, by immunizing service providers against suits directed at them as publishers, was critical in allowing the internet to flourish as a permissionless network of expression, commerce, and connection. Section 230(c)(2) remains essential to encouraging service providers to screen and filter illegal, dangerous, and objectionable third-party content.

However, the internet is no longer the decentralized system of message boards, blogs, and hobbyist websites it was when 230 was enacted. Not only do social media companies differ in scale from even large 20<sup>th</sup> century publishers --

Facebook has more members than most major religions – but their design makes them an entirely different animal:<sup>1</sup>

- They offer the most powerful advertising and organizing tools ever created.
- They use vast amounts of personal details to tailor the information users see to entice them to stay online and take actions – which often means stressing incendiary content.<sup>2</sup>
- They are not transparent to the public or users who do not know why they are shown content or who is funding it.<sup>3</sup>

Meanwhile, the economy, politics, and society have moved online in ways never imaginable. Facebook and Google now account for an astonishing half of advertising dollars<sup>4</sup> and teenagers may spend an average of three to four hours a day on Instagram.<sup>5</sup>

Significant harms flowing from the status quo are evident from a few examples:

- A COVID conspiracy film pumped out by networked pages, influencers, and algorithms was viewed more than 20mm times in only 12 hours before it was taken down by all major platforms.<sup>6</sup>
- In two prominent 230 cases, families of victims of terrorists attacks alleged terrorists used social media platforms to facilitate recruitment and commit terrorism.<sup>7</sup>
- The Facebook papers show the deliberate use of algorithms to lead young girls to content promoting anorexia and other harmful content impacting mental health.<sup>8</sup>

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<sup>1</sup> Facebook had 2.91 billion active monthly users as of September 30, 2021. Facebook, “[Third Quarter 2021 Report](#),” October 25, 2021.

<sup>2</sup> Will Oremus, Chris Alcantara, Jeremy B. Merrill, and Artur Galocha, “[How Facebook Shapes Your Feed](#),” Washington Post, October 26, 2021.

<sup>3</sup> Spandana Singh, “[Facebook Releases Information on Algorithmic Content Ranking, but More Transparency Is Needed](#),” New America, October 19, 2021.

<sup>4</sup> Alexandra Bruell, “[Amazon Surpasses 10% of U.S. Digital Ad Market Share](#),” Wall Street Journal, April 6, 2021.

<sup>5</sup> Sheera Frenkel, Ryan Mac and Mike Isaac, “[Instagram Struggles With Fears of Losing Its ‘Pipeline’: Young Users](#),” New York Times, October 16, 2021. See also, Georgia Wells and Jeff Horwitz, “[Facebook’s Effort to Attract Preteens Goes Beyond Instagram Kids, Documents Show](#),” Wall Street Journal, September 28, 2021.

<sup>6</sup> Sam Shead, “[Facebook, Twitter and YouTube pull ‘false’ coronavirus video after it goes viral](#),” CNBC, July 28, 2020.

<sup>7</sup> *Gonzalez v. Google*, 2 F.4th at 871 and *Force*, 934 F.3d at 66-70.

<sup>8</sup> Georgia Wells, Jeff Horwitz, and Deepa Seetharaman, “[Facebook Knows Instagram Is Toxic for Teen Girls, Company Documents Show](#),” Wall Street Journal, September 14, 2021.

**Unless Section 230 is clarified, it will neuter important existing protections.**

Broad court interpretations of Section 230(c)(1) have immunized social media platforms that provide “neutral tools” that magnify unlawful content. These have removed incentives for more responsible behavior by large platforms; as revealed in the Facebook papers, the company rejected employee ideas for changing design flaws in order to limit algorithmic radicalization.<sup>9</sup>

In addition, outdated rules pose a national security risk when foreign agents and terrorists can recruit, harass, and organize using these platforms.<sup>10</sup>

The bills under consideration by this subcommittee would rightly peel back immunity when social media platform design – such as nontransparent algorithmic promotion or paid ads -- promotes the most egregious types of illegal content that produce harms – including civil rights violations, international terrorism, physical or severe emotional injury, stalking or harassment, international human rights violations, and wrongful death.

**In addition to clarifying immunity, regulator and enforcement agency authorities must be updated as well.**

While these clarifying changes can help bring accountability and improve incentives, one-off lawsuits are a blunt instrument. There is not always a plaintiff with standing to sue even when there is a societal harm. And companies lack guidance about what is expected of them. For this reason, regulatory and enforcement agencies are important to provide clarity.

The bipartisan Honest Ads Act would require the same transparency for online campaign ads as are required on broadcast TV.<sup>11</sup> This should also include Know Your Customer provisions so dark money groups are unmasked.

Updated Federal Trade Commission rules could enable it to take action against deepfakes or fraudulent ads, require ongoing data to shed light on large platform

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<sup>9</sup> Mike Isaac, “[Facebook Wrestles With the Features It Used to Define Social Networking](#),” New York Times, October 25, 2021; Jeff Horwitz and Justin Scheck, “[Facebook Increasingly Suppresses Political Movements It Deems Dangerous](#),” Wall Street Journal, October 22, 2021.

<sup>10</sup> Raphael S. Cohen, Nathan Beauchamp-Mustafaga, and Joe Cheravitch et al., “[Combating Foreign Disinformation on Social Media](#),” RAND Corporation, July 19, 2021; Jessica Brandt and Amber Frankland, “[Leaks, Lies, and Altered Tape: Russia’s Maturing Information Manipulation Playbook](#),” Alliance for Securing Democracy, October 14, 2020.

<sup>11</sup> [Honest Ads Act](#)—S. 1989 (115<sup>th</sup> Congress), introduced October 19, 2017.

practices -- the equivalent of a “black box flight data” recorder, like the data the National Transportation Safety Board gets when a plane goes down -- and require transparency for researcher audits. We shouldn’t need a whistleblower to access data.

In addition, regulators could oversee platforms developing a best practices framework for preventing illegal and egregiously tortious activity which they would need to follow to enjoy Section 230 protections and that courts could refer to in deciding if a company was negligent. This effort could be made consistent with proposals in the EU draft Digital Services Act.

Mr. Chairman, it is essential to clarify these rules as more of our society moves online. Otherwise, key protections our country takes for granted may become irrelevant.