

118TH CONGRESS
1ST SESSION

S. 17

To amend Section 230 of the Communications Decency Act as follows to secure the First Amendment rights of all Americans in the 21st Century “Town Square” of social media.

IN THE SENATE OF THE UNITED STATES

JANUARY 3, 2023

Mr. PUKITA introduced the following bill; which was read twice and referred to the Senate Judiciary Subcommittee on Privacy, Technology and the Law.

A BILL

To amend Section 230 of the Communications Decency Act (“Act”) as follows to secure the First Amendment rights of all Americans in the 21st Century “Town Square” of social media.

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

SECTION 1. SHORT TITLE.

This Amendment may be cited as the “Stop Social Media Censorship Amendment”.

SEC. 2. CHANGES TO THE ACT.

Sections c, d, and e of the Act shall be replaced with—

(c) PROTECTION FOR “GOOD SAMARITAN” BLOCKING AND SCREENING OF OFFENSIVE MATERIAL.

(1) TREATMENT OF PUBLISHER OR SPEAKER.

- (A) No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.
- (B) Subparagraph (A) shall not apply to any decision, agreement, or action by a provider or user of an interactive computer service to restrict access to or availability of material provided by another information content provider. Any applicable immunity for such conduct shall be provided solely by Paragraph (2) of this subsection.
- (C) For purposes of Subparagraph (A), no provider or user of an interactive computer service shall be deemed a publisher or speaker for all other information on its service provided by another information content provider solely on account of actions voluntarily taken in good faith to restrict access to or availability of specific material that the provider or user has an objective reasonable belief violates its terms of service or use.

(2) CIVIL LIABILITY.

No provider or user of an interactive computer service shall be held liable on account of—

- (A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user has an objectively reasonable belief is obscene, lewd, lascivious, filthy, excessively violent, promoting terrorism or violent extremism, harassing, promoting self-harm, or unlawful, whether or not such material is constitutionally protected; or
- (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in Subparagraph (A).

(d) EXCLUSION FROM “GOOD SAMARITAN” IMMUNITY.

- (1) **“BAD SAMARITAN” CARVE-OUT.** Subsection (c)(1) shall not apply in any criminal prosecution under State law or any State or Federal civil action brought against an interactive computer service provider if, at the time of the facts giving rise to the prosecution or action, the service provider acted purposefully with the conscious object to promote, solicit, or facilitate material or activity by another information content provider that the service provider knew or had reason to believe would violate Federal criminal law, if knowingly disseminated or engaged in.

(2) CARVE-OUT FOR ACTUAL NOTICE OF FEDERAL CRIMINAL MATERIAL.

Subsection (c)(1) shall not apply in a criminal prosecution under State law or any state or Federal civil action brought against an interactive computer service provider if—

- (A) such prosecution or action arises out of a specific instance of material or activity on the service that would, if knowingly disseminated or engaged in, violate Federal criminal law;
- (B) the provider had actual notice of that material’s or activity’s presence on the service and its illegality; and

(C) the provider failed to do any of the following:

- (i) expeditiously remove, restrict access to or availability of, or prevent dissemination of the specific instance of material and take reasonable steps to remove, restrict access to or availability of, or prevent dissemination of the material across the service;
- (ii) thereafter report the material or activity to law enforcement when required by law or as otherwise necessary to prevent imminent harm; or
- (iii) preserve evidence related to the material or activity for at least 1 year.

(3) JUDICIAL-DECISION CARVE-OUT. Subsections (c)(1) and (2) shall not apply in any criminal prosecution or civil action arising from the failure of an interactive computer service provider to remove, restrict access or availability to, or prevent dissemination of material within a reasonable time after receiving notice of a final judgment from a court in the United States indicating that such material or activity is defamatory under state law or unlawful in any respect. However, no interactive computer service provider shall be held liable for removing, restricting access to, or preventing dissemination of material in response to receiving such notice.

(4) NOTICE MECHANISM REQUIREMENT. An interactive computer service provider shall make available to the public, without expense, an easily accessible and apparent mechanism for notifying the provider of defamatory or unlawful material or activity as described in Subsections (d)(2) and (3). An interactive computer service provider shall not be entitled to assert immunity under Subsection (c)(1) if it designs or operates its service to avoid receiving actual notice of Federal criminal material on its service or the ability to comply with the requirements under Subsection (d)(2)(C).

(E) OBLIGATIONS OF INTERACTIVE COMPUTER SERVICE.

A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

(f) EFFECT ON OTHER LAWS.

(1) NO EFFECT ON CRIMINAL LAW OR FEDERAL CIVIL ENFORCEMENT.

Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this Act, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, United States Code, or any other Federal criminal statute. Nothing in this section

shall be construed to prevent, impair, or limit the enforcement by the United States, or any agency thereof, of any civil Federal statute or regulation.

(2) NO EFFECT ON INTELLECTUAL PROPERTY LAW.

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3) STATE LAW.

Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought, and no liability may be imposed, under any state or local law that is inconsistent with this section.

(4) NO EFFECT ON COMMUNICATIONS PRIVACY LAW.

Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986, or any of the amendments made by such Act, or any similar State law.

(5) NO EFFECT ON SEX TRAFFICKING LAW.

Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit—

(A) any claim in a civil action brought under section 1595 of title 18, United States Code, if the conduct underlying the claim constitutes a violation of section 1591 of that title;

(B) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 1591 of title 18, United States Code; or

(C) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 2421A of title 18, United States Code, and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant's promotion or facilitation of prostitution was targeted.

(6) NO EFFECT ON ANTI-TERRORISM LAW. Nothing in this section (other than subsection (c)(2)(A)) shall be construed to prevent, impair, or limit any claim in a civil action brought under section 2333 of title 18, United States Code.

(7) NO EFFECT ON CHILD SEX ABUSE LAWS. Nothing in this section (other than subsection (c)(2)(A)) shall be construed to prevent, impair, or limit any civil action brought under section 2255 of title 18, United States Code, or under State law, if the conduct underlying the claim would constitute a violation of the statutes referenced in section 2255(a).

(8) NO EFFECT ON CYBER-STALKING LAWS. Nothing in this section (other than subsection (c)(2)(A)) shall be construed to prevent, impair, or limit any civil action relating to harm suffered from conduct that would constitute a violation of section 2261A(2) of title 18, United States Code.

(9) NO EFFECT ON ANTITRUST LAWS. Nothing in this section shall be construed to prevent, impair, or limit any civil action brought under the Federal antitrust laws.

(f) DEFINITIONS.

As used in this section:

(1) INTERNET.

The term “Internet” means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2) INTERACTIVE COMPUTER SERVICE.

The term “interactive computer service” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3) INFORMATION CONTENT PROVIDER.

The term “information content provider” means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service. Being responsible in whole or in part for the creation or development of information includes, but is not limited to, instances in which a person or entity solicits, comments upon, funds, or affirmatively and substantively contributes to, modifies, or alters information provided by another person or entity.

(4) ACCESS SOFTWARE PROVIDER.

The term “access software provider” means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

(A) filter, screen, allow, or disallow content;

(B) pick, choose, analyze, or digest content; or

(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

(5) GOOD FAITH.

To restrict access to or availability of specific material “in good faith,” an interactive computer service provider must—

- (A) have publicly available terms of service or use that state plainly and with particularity the criteria the service provider employs in its content-moderation practices;
- (B) restrict access to or availability of material consistent with those terms of service or use and with any official representations or disclosures regarding the service provider’s content-moderation practices;
- (C) not restrict access to or availability of material on deceptive or pretextual grounds, or apply its terms of service or use to restrict access to or availability of material that is similarly situated to material that the provider intentionally declines to restrict; and
- (D) supply the provider of the material with timely notice describing with particularity the provider’s reasonable factual basis for the restriction of access and a meaningful opportunity to respond, unless a law enforcement agency has asked that such notice not be made, or a provider reasonably believes that the material relates to terrorism or other criminal activity, or that such notice would risk imminent harm to others.

SEC. 3. EFFECTIVE DATE.

The amendments made to the Act in this bill shall be effective immediately.