

Washington, DC 20515

Dear Representative:

Rep. Paul Gosar recently introduced the Stop the Censorship Act in the House of Representatives. Unfortunately, despite this legislative effort to rein in Big Tech and curtail its ability to censor speech, the Act does not seem to address all of the ways in which Big Tech is abusing immunity under Section 230 of the Communications Decency Act (“CDA”). A mere modification of the immunity provision that would allow Big Tech to retain the immunity when removing unlawful material in “good faith” or when providing users the option to filter does not seem to address the fact that Big Tech has proven time and again that they cannot be trusted to act in “good faith,” nor does it seem to address, the lack of a legal remedy for individuals harmed by electronic defamatory statements, particularly when Big Tech plays an active role in the posting of those statements.

The CDA was passed when the Internet was in its infancy. One of the Act’s stated policies is “to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services.” While this policy was a priority for Congress, evidence of censorship has proven that this policy has not been a priority for Big Tech and I support the effort to bring that control back to individuals.

In 1996, Congress found, “Increasingly Americans are relying on interactive media for a variety of political, educational, cultural and entertainment services.” Today, Wikipedia, is the fifth most popular site in the world. A search in Google, the most popular site in the world, will often return Wikipedia as one of the top results for a search conducted in its engine. And the American public relies on Wikipedia for facts. Why shouldn’t they? It is an encyclopedia. It is the nature of Wikipedia as a source of facts, not opinions, that differentiates it from other Big Tech. But who decides what the “facts” are and what happens when the “facts” are false?

While Wikipedia holds itself out to be a collaboration, an encyclopedia that anyone in the world can edit, this is not the case. Editors are free to remove “good faith” corrections by other users. A page may become “protected” so only a handful of editors are able to make edits. They have free rein to target individuals, professions, with whom/which, they disagree. They are able to choose sources that are not objective, take quotes from objective sources out of context, use only negative quotes from objective sources, mischaracterize sources to the point that the information leaves a false impression on a massive audience—a massive audience that is relying on the website for factual information. And so on, and so on... The protection of pages and other such editorial decisions should render Wikipedia active, not passive in its role, yet it has enjoyed immunity under Section 230 of the CDA for decades and will continue to enjoy this

immunity if the Stop the Censorship Act or similar legislation does not explicitly prevent it.

In introducing the Stop the Censorship Act Rep. Gosar recognized that “Big Tech does not always foreclose on violent/obscene behavior; in fact, they often monetize it-but they do police political speech.” Big Tech also does not always foreclose on unlawful speech, such as defamatory statements posted on its sites, particularly if those statements are made about an individual with whom they disagree. Shielded by immunity, Big Tech has no motivation to give an individual harmed by such biased editorial decisions the opportunity to make a correction. It has no motivation to reveal the identities of its select group of anonymous editors. It has no motivation to consider the American public, their right to free speech, their right not to be defamed. Defamatory statements are unlawful, but attempts to have them removed are rebuffed.

Many individuals who have ideas that do not align with the views of a select group of editors are suffering irreparable harm to their reputations and businesses. They are being defamed and lack a legal remedy to repair their reputations and recover their losses. Meanwhile, Big Tech hides behind the automatic immunity, anonymous editors, and a lack of transparency as to its role in the publication of information. And while there are obstacles to defamation claims, particularly electronic defamation claims, such as jurisdiction, a statute of limitations, what constitutes republication, etc., there is no limit to the amount of time libelous material will spread through Big Tech to its worldwide audience. The harm goes on indefinitely. In essence, the law as interpreted sentences individuals to an electronic gulag in perpetuity. Allowing immunity under the circumstances has devastating consequences.

A mere modification of Section 230 of the CDA that would allow Big Tech to retain the immunity does not seem to address the fact that Big Tech has proven time and again that it cannot be trusted to act in “good faith” or the lack of a legal remedy for individuals harmed by electronic defamatory statements. It is for those reasons I urge you to explicitly remove immunity under Section 230 of the CDA when Big Tech plays an active role in the posting of electronic defamatory statements.

Sincerely,