Negative: 230 Platform Censorship

By “Coach Vance” Trefethen

***Resolved: The United States federal government substantially reform the use of Artificial Intelligence technology***

Case Summary: The AFF plan amends Section 230 of the Federal Communications Decency Act of 1996. That Act prevents legal liability to online platforms for content posted by others. Example: Jimmy posts a slanderous article on Facebook saying that Suzie is a heathen harlot. These allegations are false. However, because of “Section 230,” Suzie cannot sue Facebook for the slanderous content that Jimmy posted. Suzie would have to sue Jimmy directly for slander.   
 AFF is upset that powerful online platforms may be “censoring” content so that their viewers are getting biased political views. AFF will punish any “censoring” platforms by taking away their “Section 230” immunity if they don’t stop censoring.

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Negative: 230 Platform Censorship

INHERENCY

1. Improvements are happening in Status Quo

Facebook commissioned an independent study and is making improvements

CBS News 2020. (journalist Ines Novacic) 28 Aug 2020 “Censorship on social media? It's not what you think“ <https://www.cbsnews.com/news/censorship-social-media-conservative-liberal-cbsn-originals/> (accessed 13 Mar 2022)

Amid ongoing criticism, Facebook commissioned an independent review, headed by former Republican Senator Jon Kyl, to investigate accusations of anti-conservative bias. Kyl's 2019 [report](https://fbnewsroomus.files.wordpress.com/2019/08/covington-interim-report-1.pdf) detailed recommendations to improve transparency, and Facebook agreed to create an oversight board for content removal decisions. [Facebook](https://about.fb.com/news/2019/08/update-on-potential-anti-conservative-bias/) said it "would continue to examine, and where necessary adjust, our own policies and practices in the future."

HARMS / SIGNIFICANCE

1. No “censorship” problem with online platforms

Social media is actually better at exposing people to new ideas than their local community is

Mike Masnick 2021 ( founder of the Silicon Valley think tank, the Copia Institute) 10 Nov 2021 “The Latest Version Of Congress's Anti-Algorithm Bill Is Based On Two Separate Debunked Myths & A Misunderstanding Of How Things Work” <https://www.techdirt.com/articles/20211109/10460447910/latest-version-congresss-anti-algorithm-bill-is-based-two-separate-debunked-myths-misunderstanding-how-things-work.shtml> (accessed 21 Dec 2021)

Also, the name of the bill is based on the idea of "filter bubbles" and many of the co-sponsors of the bill claim that these websites are purposefully driving people deeper into these "filter bubbles." However, as we again just recently discussed, new research shows that [social media tends to expose people to a wider set of ideas and viewpoints](https://www.techdirt.com/articles/20211017/18143347766/new-research-shows-social-media-doesnt-turn-people-into-assholes-they-already-were-everyones-wrong-about-echo-chambers.shtml), rather than more narrowly constraining them. In fact, they're much more likely to face a "filter bubble" in their local community than by being exposed to the wider world through the internet and social media.

2. No actual bias

Conservative groups AND liberal groups BOTH claim Facebook is biased in favor of the other guys

CBS News 2020. (journalist Ines Novacic) 28 Aug 2020 “Censorship on social media? It's not what you think“ <https://www.cbsnews.com/news/censorship-social-media-conservative-liberal-cbsn-originals/> (accessed 13 Mar 2022)

"We hear that there is an anti-conservative bias on the part of Facebook or other platforms because conservatives keep saying that," said Susan Benesch, executive director of the Dangerous Speech Project, an organization based in Washington D.C. that has advised Facebook, Twitter, Google and other internet companies on how to diminish harmful content online while protecting freedom of speech. But she adds, "I would be surprised if that were the case in part because on most days the most popular, most visited groups on Facebook and pages on Facebook are very conservative ones."  She said she also finds it interesting that "many conservatives or ultra-conservatives complain that the platforms have a bias against them at the same time as Black Lives Matter activists feel that the platforms are disproportionately taking down their content."

No political bias on Twitter because no incentive to do so: They’d lose customers and money if they did

CBS News 2020. (journalist Ines Novacic) 28 Aug 2020 “Censorship on social media? It's not what you think“ <https://www.cbsnews.com/news/censorship-social-media-conservative-liberal-cbsn-originals/> (accessed 13 Mar 2022)

And a statement from Twitter said, "Twitter does not use political ideology to make any decisions whether related to ranking content on our service or how we enforce our rules. In fact, from a simple business perspective and to serve the public conversation, Twitter is incentivized to keep all voices on the service."

3. Harms of social media are exaggerated

Lawmakers complaining about it don’t even know how social media works

Scott Shackford 2021 (associate editor at REASON magazine) Let's Not Have a Bunch of Posturing Politicians Decide How Online Algorithms Should Work 11 Nov 2021 <https://reason.com/2021/11/11/lets-not-have-a-bunch-of-posturing-politicians-decide-how-online-algorithms-should-work/> (accessed 21 Dec 2021)

There's nothing new about lawmakers being completely out of grip in reality with their tech regulation proposals. One of the bill's co-sponsors Rep. David Cicilline (D-R.I.), [last seen](https://reason.com/2021/10/21/anti-amazon-congressman-appears-unfamiliar-with-the-concept-of-store-brands/) going after Amazon for having the temerity to sell its own brand of products on its site, something nearly every major retail chain does. About this particular piece of legislation, he [tells](https://www.axios.com/algorithm-bill-house-bipartisan-5293581e-430f-4ea1-8477-bd9adb63519c.html) Axios:   
“Facebook and other dominant platforms manipulate their users through opaque algorithms that prioritize growth and profit over everything else. And due to these platforms' monopoly power and dominance, users are stuck with few alternatives to this exploitative business model, whether it is in their social media feed, on paid advertisements, or in their search results.”   
The lawmaker's ignorance here is not unlike his insistence that Amazon is using its own brand to create a monopoly on goods on its own site and concealing competitors, when simply searching any product on the site will show that's just not true. We don't need a bunch of lawmakers who don't even know how social media functions to tell tech companies how algorithms should be implemented.

Can’t compare internet news “filtering” to a hypothetical world of “no filtering”: People filter their own news sources offline just as much as online

Dr. Richard Fletcher 2020. (PhD; Senior Research Fellow at Reuters Institute) 7 Jan 2020 “The truth behind filter bubbles: Bursting some myths” <https://reutersinstitute.politics.ox.ac.uk/news/truth-behind-filter-bubbles-bursting-some-myths> (accessed 22 Dec 2021)

**Pre-selected personalisation** is the personalisation that is done to people, sometimes by algorithms, sometimes without their knowledge. And this relates directly to the idea of filter bubbles because algorithms are possibly making choices on behalf of people and they may not be aware of it. The reason this distinction is particularly important is because we should avoid comparing pre-selected personalisation and its effects with a world where people do not do any kind of personalisation to themselves. We can't assume that offline, or when people are self-selecting news online, they're doing it in a completely random way. People are always engaging in personalisation to some extent and if we want to understand the extent of pre-selected personalisation, we have to compare it with the realistic alternative, not hypothetical ideals. It's important in particular not to romanticise the nature of offline news use for many people. [One of the first studies](https://academic.oup.com/joc/article-abstract/67/4/476/4642154) we did in this area looked at how people self-select news online compared to offline. We looked at the extent to which audiences for particular news outlets in the UK overlapped with one another.  When people are offline, they stick to a couple of their preferred news sources. They dig very deeply into those news sources and tend not to deviate from them.

4. Online media bias wouldn’t violate anyone’s rights, even if it were happening

1st Amendment stops the government from censoring, not private companies. Companies can do whatever they want

CBS News 2020. (journalist Ines Novacic) 28 Aug 2020 “Censorship on social media? It's not what you think“ <https://www.cbsnews.com/news/censorship-social-media-conservative-liberal-cbsn-originals/> (accessed 13 Mar 2022)

"There is this problem in the United States that when we talk about free speech, we often misunderstand it," said Henry Fernandez, co-chair of Change the Terms, a coalition of organizations that work to reduce hate online. "The First Amendment is very specific: It protects all of us as Americans from the government limiting our speech," he explained. "And so when people talk about, 'Well, if I get kicked off of Facebook, that's an attack on my free speech or on my First Amendment right' — that's just not true. The companies have the ability to decide what speech they will allow. They're not the government."

5. No one harmed

It’s not a harm until someone gets harmed

…and the Affirmative can’t name anyone who has had their rights violated or their health or money diminished by anything going on in the Status Quo. “I don’t like it” is not a harm, and that’s all we have from the Affirmative at this point.

SOLVENCY

1. AI regulation won’t solve

Simplistic narrative of “fix AI” or “algorithms” is not the solution to online speech content. Lots of other factors must be studied to get a real solution

Emma Llansó, Joris van Hoboken , Paddy Leerssen , Jaron Harambam 2020 (Emma Llansó is director of the Center for Democracy & Technology’s Free Expression Project. Joris van Hoboken is a senior researcher at the Institute for Information Law (IViR), and a professor of law at the Vrije Universiteit Brussels. Paddy Leerssen is a Ph.D. candidate at the Institute for Information Law. Jaron Harambam is an interdisciplinary sociologist working on news, disinformation, and conspiracy theories in today’s algorithmically structured media ecosystem. Holds a Marie Sklodowska-Curie Individual Fellowship at KU Leuven’s Institute for Media Studies) Artificial Intelligence, Content Moderation, and Freedom of Expression 26 Feb 2020 <https://www.ivir.nl/publicaties/download/AI-Llanso-Van-Hoboken-Feb-2020.pdf> (accessed 13 Mar 2022)

1. Speech governance debates should not focus exclusively on AI technology as such, but take into account a broader range of automating technologies and processes, including simpler forms of automation and algorithmic systems.   
**END QUOTE. THEY GO ON LATER IN THE SAME CONTEXT TO WRITE QUOTE:**  
4. Policy makers should resist simplistic narratives that lay the blame for harmful content online exclusively with “algorithms.” Instead, policy makers should recognize the role of users and communities in creating and enabling harmful content. Solutions to policy challenges such as hate speech, terrorist propaganda, and disinformation will necessarily be multifaceted.

2. “Neutrality” is impossible

Algorithms can’t be made “neutral”: No one can define it, and the attempt to do so would be self-contradictory

Emma Llansó, Joris van Hoboken , Paddy Leerssen , Jaron Harambam 2020 (Emma Llansó is director of the Center for Democracy & Technology’s Free Expression Project. Joris van Hoboken is a senior researcher at the Institute for Information Law (IViR), and a professor of law at the Vrije Universiteit Brussels. Paddy Leerssen is a Ph.D. candidate at the Institute for Information Law. Jaron Harambam is an interdisciplinary sociologist working on news, disinformation, and conspiracy theories in today’s algorithmically structured media ecosystem. Holds a Marie Sklodowska-Curie Individual Fellowship at KU Leuven’s Institute for Media Studies) Artificial Intelligence, Content Moderation, and Freedom of Expression 26 Feb 2020 <https://www.ivir.nl/publicaties/download/AI-Llanso-Van-Hoboken-Feb-2020.pdf> (accessed 13 Mar 2022)

In the U.S., Senator Josh Hawley (R-MO) has proposed that platforms observe “political balance” in their algorithms. However, implementing such principles in practice is not straightforward: as discussed, it is not clear how recommendation algorithms can be made “neutral,” or what would constitute “discrimination,” since they necessarily rank some content over others. In some sense, the entire purpose of these algorithms is to discriminate. Even more difficult are concepts like “political balance,” “bias,” and “diversity,” which implicate value-laden and content-specific judgements about newsworthiness. Indeed, these two types of principles (non-discrimination and diversity) may contradict each other; diversity rules could require platforms to prioritize certain specific types of content, whereas non-discrimination rules might prohibit them from doing so.

3. More study needed

It’s way too premature to be talking about regulating AI management of online content. We need a lot more study

Emma Llansó, Joris van Hoboken , Paddy Leerssen , Jaron Harambam 2020 (Emma Llansó is director of the Center for Democracy & Technology’s Free Expression Project. Joris van Hoboken is a senior researcher at the Institute for Information Law (IViR), and a professor of law at the Vrije Universiteit Brussels. Paddy Leerssen is a Ph.D. candidate at the Institute for Information Law. Jaron Harambam is an interdisciplinary sociologist working on news, disinformation, and conspiracy theories in today’s algorithmically structured media ecosystem. Holds a Marie Sklodowska-Curie Individual Fellowship at KU Leuven’s Institute for Media Studies) Artificial Intelligence, Content Moderation, and Freedom of Expression 26 Feb 2020 <https://www.ivir.nl/publicaties/download/AI-Llanso-Van-Hoboken-Feb-2020.pdf> (accessed 13 Mar 2022)

Platforms use countless different forms of automation to shape our experiences online. As we have seen, this is not just about “AI.” And although technological solutions for content moderation and curation are increasingly widespread, many are still rudimentary and imperfect. Use of automation in content moderation exposes all speech to a form of evaluation ex ante and in a way that fails to consider linguistic, social, historical, and other relevant context – which creates substantial risks to the freedom of expression. Governments should therefore act with caution and resist simplistic narratives about all-powerful algorithms or AI as being the sole cause of, or solution to, the spread of harmful content online. Indeed, any legal requirements to adopt specific forms of automation are likely to be premature, and would present major risks to freedom of expression. For now, what governments should focus on is enhancing transparency in existing practices, empowering research communities with the necessary data, and ensuring that users have access to meaningful choice and redress mechanisms.

DISADVANTAGES

1. More censorship / Less free expression

Link: Even with the risk of bias, we’re a lot better off with AI because it isn’t possible to have online sharing of ideas and information without it

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AI is at the core of the services that are central to effectuating people’s rights to express themselves and to access information. Search engines, social media, and other internet services deploy various complex and adaptive information-processing technologies at the core of their operations. Without these technologies, these services, and the value they provide to people in expressing themselves and accessing information, would simply not be possible. This is not to say that relevant services are always doing a good job in supporting freedom of expression. There are significant concerns about how well current services serve our democracies and respect people’s right to freedom of expression. Even so, the deployment of these advanced data-processing operations will remain central to our media and communications ecosystem.

Turn the Harms: Freedom of expression gets worse without AI

Emma Llansó, Joris van Hoboken , Paddy Leerssen , Jaron Harambam 2020 (Emma Llansó is director of the Center for Democracy & Technology’s Free Expression Project. Joris van Hoboken is a senior researcher at the Institute for Information Law (IViR), and a professor of law at the Vrije Universiteit Brussels. Paddy Leerssen is a Ph.D. candidate at the Institute for Information Law. Jaron Harambam is an interdisciplinary sociologist working on news, disinformation, and conspiracy theories in today’s algorithmically structured media ecosystem. Holds a Marie Sklodowska-Curie Individual Fellowship at KU Leuven’s Institute for Media Studies) Artificial Intelligence, Content Moderation, and Freedom of Expression 26 Feb 2020 <https://www.ivir.nl/publicaties/download/AI-Llanso-Van-Hoboken-Feb-2020.pdf> (accessed 13 Mar 2022)

Second, algorithmic systems have become a necessary tool to defend freedom of expression and the values underlying it. AI not only powers complex service operations, it is increasingly necessary to create the conditions for a robust and vibrant democratic exchange on online platforms. To make a simple analogy: Without AI, our media would increasingly feel like an email inbox without a spam filter.

Link: Removing Section 230 protection would decrease the amount of speech available to users

Congressional Research Service 2020. (non-partisan research agency of Congress) “UPDATE: Section 230 and the Executive Order on Preventing Online Censorship” updated 16 Oct 2020 <https://crsreports.congress.gov/product/pdf/LSB/LSB10484> (accessed 13 March 2022)

Section 230 was enacted in 1996 in response to a trial court ruling that allowed an online platform to be subject to liability for hosting defamatory speech, in part because the platform had said it would police its site for unwanted speech. Congress was concerned that this ruling created a perverse incentive for sites to refrain from monitoring content to avoid liability. Section 230 can be seen as speech-protective: by barring lawsuits that would punish platforms for hosting speech, it may encourage platforms to err on the side of hosting more content, while still allowing sites to take down content they see as objectionable.

Impact: Turn the AFF’s harms. Gets worse post-plan

If online platform censorship of ideas is a bad thing, they’ll do even more of it after the plan takes effect if they ever do enforce the plan with Section 230 liability.

2. Promoting pornography and obscenity

Link: Status Quo allows online platforms to censor pornography and obscenity

Congressional Research Service 2020. (non-partisan research agency of Congress) “UPDATE: Section 230 and the Executive Order on Preventing Online Censorship” updated 16 Oct 2020 <https://crsreports.congress.gov/product/pdf/LSB/LSB10484> (accessed 13 March 2022)

Second, Section 230(c)(2) provides that interactive computer service providers and users may not be “held liable” for any voluntary, “good faith” action “to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable.”

Link: AFF says online sites can no longer censor ideas or content – they must let everything through

That’s their plan.

Link: Enormous volume means human filtering alone wouldn’t be able to catch it, even if their Plan allowed it

Emma Llansó, Joris van Hoboken , Paddy Leerssen , Jaron Harambam 2020 (Emma Llansó is director of the Center for Democracy & Technology’s Free Expression Project. Joris van Hoboken is a senior researcher at the Institute for Information Law (IViR), and a professor of law at the Vrije Universiteit Brussels. Paddy Leerssen is a Ph.D. candidate at the Institute for Information Law. Jaron Harambam is an interdisciplinary sociologist working on news, disinformation, and conspiracy theories in today’s algorithmically structured media ecosystem. Holds a Marie Sklodowska-Curie Individual Fellowship at KU Leuven’s Institute for Media Studies) Artificial Intelligence, Content Moderation, and Freedom of Expression 26 Feb 2020 <https://www.ivir.nl/publicaties/download/AI-Llanso-Van-Hoboken-Feb-2020.pdf> (accessed 13 Mar 2022)

Enormous amounts of content are uploaded and circulated on the Internet every day, far outpacing any intermediary’s ability to have humans analyze content before it is uploaded.5 Many companies and governments are turning to automated processes to assist in detection and analysis of problematic content, including disinformation, hate speech, and terrorist propaganda.

Link: Supreme Court says indecent material on the internet is protected by the 1st Amendment (freedom of speech)

Justice John Paul Stevens 1997. Ruling of the Court in the case of Reno v. ACLU 26 June 1997 <https://www.law.cornell.edu/supct/html/96-511.ZO.html> (accessed 13 Mar 2022)

The Government apparently assumes that the unregulated availability of "indecent" and "patently offensive" material on the Internet is driving countless citizens away from the medium because of the risk of exposing themselves or their children to harmful material. We find this argument singularly unpersuasive. The dramatic expansion of this new marketplace of ideas contradicts the factual basis of this contention. The record demonstrates that the growth of the Internet has been and continues to be phenomenal. As a matter of constitutional tradition, in the absence of evidence to the contrary, we presume that governmental regulation of the content of speech is more likely to interfere with the free exchange of ideas than to encourage it. The interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship.

Impact: Pornography and obscenity coming to a Facebook page near you

In Status Quo, online content platforms can censor out obscenity and pornography. AFF says they can no longer censor content, and the Supreme Court says pornography is “content” protected by the First Amendment on the internet. Facebook today censors out porn, but post-plan they won’t be able to.

3. Hypocrisy

Link: AFF plan is something you would never want done to you.

You would be quite upset if the government required you not to remove any comments from anyone else posting on your Facebook page. Imagine someone posting a comment on your page promoting communism, Naziism, racism, atheism, or some other offensive views. You absolutely would want to be able to delete those – in other words, censor them. You don’t want their ideas on your platform with your name on it.

Impact: Hypocrisy. Don’t vote for a plan that you wouldn’t want applied to you

If you wouldn’t want to be restricted from removing content you disagree with, you cannot without hypocrisy take that right away from someone else. Don’t tell Facebook they can’t censor content if you wouldn’t want Facebook telling you that you can’t censor content.

4. Trashing the First Amendment

Link: AFF Plan would turn the FCC into the President’s “speech police” and violate the 1st Amendment

Office of Federal Communications Commissioner Jessica Rosenworcel 2020. STATEMENT BY FCC COMMISSIONER JESSICA ROSENWORCEL ON EXECUTIVE ORDER 28 May 2020 <https://docs.fcc.gov/public/attachments/DOC-364605A1.pdf> (accessed 13 Mar 2022)

According to press reports, an Executive Order the White House plans to release today would call for the Federal Communications Commission to propose rules about when and how social media companies may edit content online without forfeiting their protections under Section 230 of the Communications Decency Act. Section 230 protects social media companies from legal liability for the material their users post. In response to these reports, Commissioner Rosenworcel issued the following statement: “This does not work. Social media can be frustrating. But an Executive Order that would turn the Federal Communications Commission into the President’s speech police is not the answer. It’s time for those in Washington to speak up for the First Amendment. History won’t be kind to silence.”

Impact: Compromising Freedom of Speech is really bad. It’s the foundation of nearly all other human rights

Prof. Stephen J. Wermiel 2018. (professor of practice of constitutional law at American University Washington College of Law) The Ongoing Challenge to Define Free Speech (article is undated but says it was written 227 years after the ratification of the Bill of Rights in 1791) <https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-ongoing-challenge-to-define-free-speech/the-ongoing-challenge-to-define-free-speech/> (accessed 6 Oct 2021)

Freedom of speech, Supreme Court Justice Benjamin Cardozo declared more than 80 years ago, “is the matrix, the indispensable condition of nearly every other form of freedom.” Countless other justices, commentators, philosophers, and more have waxed eloquent for decades over the critically important role that freedom of speech plays in promoting and maintaining democracy.

Impact: Harms of a “biased” publisher are outweighed by the harms of violating the 1st Amendment - James Madison 1791

Jackie Mansky 2018 (journalist) The Age-Old Problem of “Fake News” 7 May 2018 SMITHSONIAN MAGAZINE <https://www.smithsonianmag.com/history/age-old-problem-fake-news-180968945/> (accessed 24 Oct 2021)

Whether it's “fake news” fabrications like those promulgated by the Sons of Liberty or “fake news” stories that in reality break down to a difference of opinion, the tradeoffs of having a free independent press has been part of American politics since the beginning. “I think Madison was probably the best on that one when he basically said you have to tolerate some sedition in order to have free communication. You can’t root out all,” says Halperin. Writing anonymously in the *National Gazette* in 1791, Madison speaks to the power of the literati, which he classified as people who are writing things in newspapers and influencing public opinion. There, says Sheehan, he articulates the importance of a free press, partisan though it may be, writing: “They are the cultivators of the human mind—the manufacturers of useful knowledge—the agents of the commerce of ideas—the censors of public manners—the teachers of the arts of life and the means of happiness.”