

Willard, Lauren (OAG)

From: Willard, Lauren (OAG)
Sent: Friday, May 1, 2020 3:25 PM
To: Hardee, Christopher (NSD); Downing, Richard (CRM); Goldfoot, Josh (CRM); Toensing, Brady (OLP); Raman, Sujit (ODAG); Motta, Thomas G. (DO) (FBI); Wallace, Benjamin (OLC); Grieco, Christopher (ODAG); Champoux, Mark (OLP); Whitaker, Henry C. (OLC); Wiegmann, Brad (NSD); Gelber, Alexandra (CRM); Winn, Peter A. (OPCL); Pandya, Brian (OASG); Feith, Daniel (ODAG); Shores, Ryan (ODAG); Ramsden, Michelle (OPCL); Proia, Andrew (OPCL); Eyler, Gustav W (b)(6), (b)(7)(C) per FBI (OGC) (FBI); Jones, Darrin E. (ITID) (FBI); Peck, Jessica (CRM); Sabol, Sherry E. (OGC) (FBI)
Subject: RE: Section 230 April 27 Update
Attachments: Section 230 Key Takeaways and Recommendations_DRAFT 5.1 3pm.docx; Section 230 Summary of Public Workshop and Expert Roundtable.pdf

Deliberative Process / Pre-Decisional

As promised, attached are the current draft Section 230 roll-out materials. The PDF is the summary of the Workshop and Roundtable. The Word Documents is our Key Takeaways, repackaged with a preface and summary of DOJ actions.

The first 4 pages also will be on the Section 230 website itself with links to the other materials.

Many thanks to everyone who helped edit and pull together the current draft!

We would greatly appreciate any thoughts or edits to the attached Word Document by **COB next Monday, May 4.**

And we can plan to discuss any feedback at our standing Tuesday morning call. The Key Takeaway section hasn't changed significantly since the last time it was circulated, so feel free to focus on the preface/overview if you are pressed for time.

I'm also taking recommendations on what to call our work product, whether "report," "key takeaways," "recommendations," "read-out," etc. Ideally something that isn't too formal, give the high-level nature, but also catchy and substantive.

There is also a placeholder for th (b) (5) . We can decide later (b) (5) , once we have a draft of the proposed legislative text.

Have a great weekend all!

Best,
Lauren

From: Willard, Lauren (OAG)
Sent: Friday, May 1, 2020 12:27 PM
To: Hardee, Christopher (NSD) (b) (6) >; Downing, Richard (CRM) (b) (6) >; Goldfoot, Josh (CRM) (b) (6) >; Toensing, Brady (OLP) (b) (6) >; Raman, Sujit (ODAG) (b) (6) >; Motta, Thomas G. (DO) (FBI) (b)(7)(E) per FBI >; Wallace, Benjamin (OLC) (b) (6) >; Grieco, Christopher (ODAG)

(b) (6) >; Champoux, Mark (OLP) (b) (6) >; Whitaker, Henry C. (OLC)
(b) (6) >; Wiegmann, Brad (NSD) (b) (6) >; Gelber, Alexandra (CRM)
(b) (6) >; Winn, Peter A. (OPCL) (b) (6) >; Pandya, Brian (OASG)
(b) (6) >; Feith, Daniel (ODAG) (b) (6) >; Shores, Ryan (ODAG)
(b) (6) >; Ramsden, Michelle (OPCL) (b) (6) >; Proia, Andrew (OPCL)
(b) (6) >; Eyler, Gustav W. (b) (6) (b)(6), (b)(7)(C), (b)(7)(E) per FBI (OGC) (FBI)
(b)(6), (b)(7)(C), (b)(7)(E) per FBI >; Jones, Darrin E. (ITID) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI >; Peck, Jessica (CRM)
(b) (6) >; Sabol, Sherry E. (OGC) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI >

Subject: RE: Section 230 April 27 Update

Deliberative Process / Pre-Decisional

Hi all,

Based on everyone's feedback, attached is the current near-final draft of our OMB legislation. Please let me know if anyone has any critical final concerns not already raised, or spots any typos or nits. I'd like to send back to OLA to re-circulate through the building on Monday.

Brady will be circulating a separate document, which will contain the proposals on (b) (5)

(b) (5) we thought it preferable to keep in a separate document for now to facilitate review and commenting.

On the attached draft, I'll note that FBI has re-requested that (b)(5) per FBI be added to the (b)(5) per FBI definition (in purple below). The prior consensus was (b)(5) per FBI. The goal of the language is to (b)(5) per FBI

(b)(5) per FBI

Please email me (or the group) by **COB today** if you want to include the (b)(5) per FBI language. If there is sufficient support, we can reopen a broader discussion before going back to OLA.

I will also follow up this afternoon with the current draft of the Section 230 Roll-Out Materials.

Best,
Lauren

From: Willard, Lauren (OAG)

Sent: Tuesday, April 28, 2020 4:02 PM

To: Hardee, Christopher (NSD) (b) (6) >; Downing, Richard (CRM)

(b) (6) >; Goldfoot, Josh (CRM) (b) (6) >; Toensing, Brady (OLP) (b) (6) >; Raman, Sujit (ODAG) (b) (6) >; Motta, Thomas G. (DO) (FBI) (b)(7)(E) per FBI >; Wallace, Benjamin (OLC) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >; Champoux, Mark (OLP) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >; Wiegmann, Brad (NSD) (b) (6) >; Gelber, Alexandra (CRM) (b) (6) >; Winn, Peter A. (OPCL) (b) (6) >; Pandya, Brian (OASG) (b) (6) >; Feith, Daniel (ODAG) (b) (6) >; Shores, Ryan (ODAG)

(b) (6) >; Ramsden, Michelle (OPCL) (b) (6) >; Proia, Andrew (OPCL) (b) (6) >; Eyler, Gustav W. (b) (6) (b)(6), (b)(7)(C), (b)(7)(E) per FBI (OGC) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI >; Jones, Darrin E. (ITID) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI >; Peck, Jessica (CRM) (b) (6) >; Sabol, Sherry E. (OGC) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI >
Subject: RE: Section 230 April 27 Update

Deliberative Process / Pre-Decisional

Hi all,

I wanted to share with the full group OPCL's edits. If others have edits, please feel free to layer on top of this draft (but not necessary). Again, where possible, please send your informal quick reactions to the new edits by the end of today.

Best,
Lauren

From: Willard, Lauren (OAG)

Sent: Monday, April 27, 2020 9:00 PM

To: Hardee, Christopher (NSD) (b) (6) >; Downing, Richard (CRM) (b) (6) >; Goldfoot, Josh (CRM) (b) (6) >; Toensing, Brady (OLP) (b) (6) >; Raman, Sujit (ODAG) (b) (6) >; Motta, Thomas G. (DO) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI >; Wallace, Benjamin (OLC) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >; Champoux, Mark (OLP) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >; Wiegmann, Brad (NSD) (b) (6) >; Gelber, Alexandra (CRM) (b) (6) >; Winn, Peter A. (OPCL) (b) (6) >; Pandya, Brian (OASG) (b) (6) >; Feith, Daniel (ODAG) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >; Ramsden, Michelle (OPCL) (b) (6) >; Proia, Andrew (OPCL) (b) (6) >; Eyler, Gustav W. (b) (6) (b)(6), (b)(7)(C), (b)(7)(E) per FBI (OGC) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI >; Jones, Darrin E. (ITID) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI >; Peck, Jessica (CRM) (b) (6) >; Sabol, Sherry E. (OGC) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI >
Subject: Section 230 April 27 Update

Deliberative Process / Pre-Decisional

Hi all,

As promised, attached is the current draft legislation on Section 230 with a few additional comments and proposed edits based on the feedback from components. Per last week's call, I think everyone was comfortable with FBI's proposed edits to change (b)(5) per FBI to (b)(5) per FBI and to add (b)(5) per FBI. But I've left those in tracked changes for reference.

In lieu of a call, could everyone email the group with any further edits or comments based on the current draft? Given the timing, please try to limit edits/comments to the items in tracked changes. (Although if you spot a typo or nit, that's okay to flag). And no need to get formal approval, as we will give components one last chance to review the new draft.

(b) (5) is still being worked on offline, but they will report back to the full group soon with options.

I'd greatly appreciate your quick review and reactions by tomorrow COB if possible. Hopefully it won't take too long, but if you need more time feel free to let me know.

Many thanks!
Lauren

From: Willard, Lauren (OAG)
Sent: Monday, April 27, 2020 4:06 PM
To: Hardee, Christopher (NSD) (b) (6) >; Downing, Richard (CRM) (b) (6) >; Goldfoot, Josh (CRM) (b) (6) >; Toensing, Brady (OLP) (b) (6) >; Raman, Sujit (ODAG) (b) (6) >; Motta, Thomas G. (DO) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI >; Wallace, Benjamin (OLC) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >; Champoux, Mark (OLP) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >; Wiegmann, Brad (NSD) (b) (6) >; Gelber, Alexandra (CRM) (b) (6) >; Winn, Peter A. (OPCL) (b) (6) >; Pandya, Brian (OASG) (b) (6) >; Feith, Daniel (ODAG) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >; Ramsden, Michelle (OPCL) (b) (6) >; Proia, Andrew (OPCL) (b) (6) >; Eyler, Gustav W. (b) (6) (b)(6), (b)(7)(C), (b)(7)(E) per FBI (OGC) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI >; Jones, Darrin E. (ITID) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI >; Peck, Jessica (CRM) (b) (6) >; Sabol, Sherry E. (OGC) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI >
Subject: RE: Section 230 April 8 Update

Hi all,

I propose taking down tomorrow's call, and instead will work on circulating the current draft of the materials tomorrow that folks can comment on over email.

If there is an issue that would benefit from a call, I'll try to set that up later this week or use next Tuesday's call to discuss.

We are getting close, and appreciate everyone's hard work on the final push!

Best,
Lauren

>

Willard, Lauren (OAG)

From: Willard, Lauren (OAG)
Sent: Monday, May 4, 2020 12:11 PM
To: Boyd, Stephen E. (OLA); Escalona, Prim F. (OLA); Hankey, Mary Blanche (OLA); (b) (6) (OLA) (b) (6) (OLA)
Subject: Section 230 Legislative Efforts
Attachments: Section 230 Key Takeaways and Recommendations_DRAFT 5.1 5pm.docx; Section 230 Summary of Public Workshop and Expert Roundtable.pdf; Section 230 Redline Proposal (DELIBERATIVE) DRAFT 5.1.DOCX; Section 230 OLA Cover Letter (DELIBERATIVE) DRAFT 4.28.DOCX

Deliberative Process / Pre-Decisional

Hi all,

As mentioned to some of you already, we are hoping to roll out our Section 230 Workshop materials early next week, with the goal of sending the draft Section 230 legislation to OMB later this month. Attached is the current draft legislation (redline) and our Section 230 Workshop read-out materials (b) (6) – we are waiting for final Working Group sign-off by tomorrow at 11am, and then I can send you the revised draft to send through the building (if needed). There were not any significant substantive changes from the prior draft, as most were nits and clarifications. Also, welcome OLA's thoughts and edits on any of the draft materials.

We'd like to schedule a meeting with the AG this week (ideally Thursday) to walk him through the final draft legislation, Workshop materials, and discuss plans for roll out. We think it would make sense to have the DAG, Claire, and Stephen to attend. In particular, it would be helpful to get OLA's thoughts on (b) (5)

Thought it would make sense to schedule a meeting/call with relevant OLA folks in advance of Thursday to start planning outreach strategy. Let me know if there is a day/time that works best.

Thanks!
Lauren

Lauren S. Willard
Counselor to the Attorney General
U.S. Department of Justice
M (b) (6)
(b) (6)

Willard, Lauren (OAG)

From: Willard, Lauren (OAG)
Sent: Monday, May 4, 2020 2:02 PM
To: (b) (6) (OLA)
Subject: FW: Section 230 Legislative Efforts
Attachments: Section 230 Key Takeaways and Recommendations_DRAFT 5.1 5pm.docx; Section 230 Summary of Public Workshop and Expert Roundtable.pdf; Section 230 Redline Proposal (DELIBERATIVE) DRAFT 5.1.DOCX; Section 230 OLA Cover Letter (DELIBERATIVE) DRAFT 4.28.DOCX

(b) (6)

Do you have a second to chat briefly on process, and specifically whether to circulate the small edits again and if so how quickly we could do so.

Thanks!
Lauren

From: Willard, Lauren (OAG)
Sent: Monday, May 4, 2020 12:11 PM
To: Boyd, Stephen E. (OLA) (b) (6) >; Escalona, Prim F. (OLA) (b) (6) >; Hankey, Mary Blanche (OLA) (b) (6) (b) (6) (OLA) (b) (6) (OLA) >
Subject: Section 230 Legislative Efforts

Duplicative Information - See Document ID 0.7.2270.6405

Willard, Lauren (OAG)

From: Willard, Lauren (OAG)
Sent: Thursday, May 7, 2020 12:58 PM
To: Grieco, Christopher (ODAG); Shores, Ryan (ODAG); Raman, Sujit (ODAG); Feith, Daniel (ODAG)
Subject: 230 materials
Attachments: Section 230 Section by Section (DELIBERATIVE) 5.7.docx; Section 230 OLA Cover Letter_Draft 5.7.docx; Section 230 Redline Proposal (DELIBERATIVE) DRAFT 5.7.DOCX; Additional 230 Options_DRAFT 5.4.docx

All,

Just so we all have the same documents. Attached are the current version of the OMB package on Section 230. OLA will be sending around a tracked changes version of each to components. Almost all the changes were stylistic rather than substantive. I will send around the tracked changes versions in a second email.

I may also brief the AG on th (b) (5) next week, so I've included the current draft of those if you would like to also share with the DAG.

Lauren S. Willard
Counselor to the Attorney General
U.S. Department of Justice
M (b) (6)
(b) (6)

Pandya, Brian (OASG)

From: Pandya, Brian (OASG)
Sent: Monday, May 11, 2020 9:03 PM
To: Willard, Lauren (OAG)
Cc: Grieco, Christopher (ODAG)
Subject: RE: Cox
Attachments: Section 230 Key Takeaways and Recommendations_DRAFT 5.1 5pm.docx

I will email Chris Cox tomorrow morning to setup time to talk in the afternoon or Wednesday. Chris G., do you want to join the call, and if so, what times work (or do not work) for you? Lauren, can we quickly talk tomorrow morning about what we should and should not discuss? Without sharing the document itself, my plan is to say we're soon going to publishing a readout of the February workshop and then preview the things we'll be saying in the attached document.

From: Willard, Lauren (OAG) (b) (6) >
Sent: Monday, May 11, 2020 5:47 PM
To: Pandya, Brian (OASG) (b) (6) >
Cc: Grieco, Christopher (ODAG) (b) (6) >
Subject: RE: Cox

Hi Brian,

I think it still makes sense to reach out to Chris Cox to try to chat this week about Section 230. We can keep it high-level, and certainly don't want to share much via email.

Feel free to give me a call if you what to chat on next steps. I'm at my desk for no (b) (6) .

Best,
Lauren

From: Pandya, Brian (OASG) (b) (6) >
Sent: Monday, May 11, 2020 1:28 PM
To: Willard, Lauren (OAG) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >
Subject: RE: Cox

Yes, I can reach out after today's meeting.

From: Willard, Lauren (OAG) (b) (6) >
Sent: Monday, May 11, 2020 1:26 PM
To: Pandya, Brian (OASG) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >
Subject: Cox

Should we try to schedule a call with Chris Cox this week? It may make sense to wait until after today's meeting, but

don't want to forget.

Best,
Lauren

Lauren S. Willard
Counselor to the Attorney General
U.S. Department of Justice

M (b) (6)

(b) (6)

(b) (6) (OLA)

From: (b) (6) (OLA)
Sent: Tuesday, May 12, 2020 10:05 AM
To: Willard, Lauren (OAG); Motta, Thomas G. (DO) (FBI)
Subject: RE: Section 230 // May 12 Update
Attachments: Section 230 OLA Cover Letter (DELIBERATIVE) Updated w Track Changes.docx; Section 230 Redline Proposal (DELIBERATIVE) Updated w Track Changes.docx; Section 230 Sction by Section (DELIBERATIVE) Updated w Track Changes.docx

Of course- it's attached here.

From: Willard, Lauren (OAG) (b) (6) >
Sent: Tuesday, May 12, 2020 10:02 AM
To: Motta, Thomas G. (DO) (FBI) (b)(7)(E) per FBI >
C (b) (6) (OLA) (b) (6) >
Subject: RE: Section 230 // May 12 Update

Actually CC'in (b) (6) this time!

From: Willard, Lauren (OAG)
Sent: Tuesday, May 12, 2020 10:02 AM
To: 'Motta, Thomas G. (DO) (FBI)' (b)(7)(E) per FBI >
Subject: RE: Section 230 // May 12 Update

Hi Gregg,

FBI hopefully received the latest draft from OLA last Thursday. CC'in (b) (6) (b) (6) – do you have the email anddraft that was circulated to FBI with the latest revisions on the primary Section 230 proposal? Do you mind sending to Gregg and me.

Thanks!
Lauren

From: Motta, Thomas G. (DO) (FBI) (b)(7)(E) per FBI >
Sent: Tuesday, May 12, 2020 9:58 AM
To: Willard, Lauren (OAG) (b) (6) >
Subject: RE: Section 230 // May 12 Update

Lauren,

Could you circulate what you consider to be the current, latest redline of the primary proposed section 230 draft.
It's been awhile since it was last circulated and I want to make sure I'm working off the latest draft.
Perhaps the document needs an updated time stamp?

Thanks

Gregg

From: Willard, Lauren (OAG) (b) (6)]
Sent: Tuesday, May 12, 2020 8:55 AM
To: Toensing, Brady (OLP) (JMD) (b) (6) >; Hardee, Christopher (NSD) (JMD) (b) (6) >; Downing, Richard (CRM) (b) (6) >; Goldfoot, Josh (CRM) (b) (6) >; Raman, Sujit (ODAG) (JMD) (b) (6) >; Motta, Thomas G. (DO) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI >; Wallace, Benjamin (OLC) (JMD) (b) (6) >; Grieco, Christopher (ODAG) (JMD) (b) (6) >; Champoux, Mark (OLP) (JMD) (b) (6) >; Whitaker, Henry C. (OLC) (JMD) (b) (6) >; Wiegmann, Brad (NSD) (JMD) (b) (6) >; Gelber, Alexandra (CRM) (b) (6) >; Winn, Peter A. (OPCL) (JMD) (b) (6) >; Pandya, Brian (OASG) (JMD) (b) (6) >; Feith, Daniel (ODAG) (JMD) (b) (6) >; Shores, Ryan (ODAG) (JMD) (b) (6) >; Ramsden, Michelle (OPCL) (JMD) (b) (6) >; Proia, Andrew (OPCL) (JMD) (b) (6) >; Eyler, Gustav W. (CIV) (b) (6) (b)(6), (b)(7)(C), (b)(7)(E) per FBI (OGC) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI >; Jones, Darrin E. (ITID) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI >; Peck, Jessica (CRM) (b) (6) >; Sabol, Sherry E. (OGC) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI >
Subject: Section 230 // May 12 Update

Deliberative Process // Pre-Decisional

Morning all,

We should be able to keep this morning's call fairly brief, but wanted to update the group on a few things.

1. **Proposal t** (b) (5) . The DAG has expressed concern about th (b) (5) . The current proposal is t (b) (5) . We will discuss further on the call, but it would be helpful to know if anyone has concerns abo (b) (5) .
2. (b) (5) . There is also a changed preference from leadership based on discussions with OLA that w (b) (5) . This wi (b) (5) . In some ways, it ma (b) (5) , but will requir (b) (5) . We will try to recirculate the revised draft in the next day or so.
3. (b) (5) . Shortly in advance of releasing our legislation and summary, it would be helpful t (b) (5) . Please send me any suggestions o (b) (5)

█ by COB today.

4. **Additional Provisions.** Thanks again to everyone who has worked on th (b) (5) █ and other proposals, and for everyone who sent in thoughts last Friday. Rather than take up this morning's call, we will continue to workshop those in smaller groups and over email. If you haven't sent edits or comments on the proposals, please send as soon as you can. Since we are now aiming to submit the OMB draft at the same time as our Takeaways, we will need to decide this week what is in each respective "bucket" of ripe now, still thinking about, or not mentioning. I've reattached the proposal as well as the section-by-section summaries that were drafted for each.

Many thanks, talk soon!

Best,

Lauren

Lauren S. Willard

Counselor to the Attorney General

U.S. Department of Justice

M (b) (6) █

(b) (6) █

Shores, Ryan (ODAG)

From: Shores, Ryan (ODAG)
Sent: Thursday, May 14, 2020 1:00 PM
To: Pandya, Brian (OASG); Willard, Lauren (OAG); Grieco, Christopher (ODAG)
Subject: FW: Written Statement
Attachments: News Media Alliance Sec. 230 Testimony 2-19-20.docx
Importance: High

This provides useful context for our 2:30 call.

From: David Chavern (b) (6) >
Sent: Thursday, February 13, 2020 4:33 PM
To: Rathbun, Douglas (OLP) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >
Cc: Danielle Coffey (b) (6) >
Subject: Written Statement
Importance: High

Doug/Ryan: Attached is my written statement for the workshop.

Let me know what else you need -- many thanks, David



David Chavern
President & CEO
News Media Alliance
(b) (6) | www.newsmediaalliance.org
(b) (6)

Our new address:
4401 N. Fairfax Dr., Suite 300, Arlington, VA 22203

Follow Us!   

The News Media and Section 230

We want to thank the Department of Justice for holding this workshop on Section 230 of the Communications Decency Act. There is often more heat than light around this topic, but we believe that it is deeply important not only for journalism but also for our civic society as a whole.

The News Media Alliance represents approximately 2,000 news organizations across the United States and Europe. These publishers are critical to the communities they serve, but many are struggling financially -- in large part because the online marketplace is dominated by a few platforms that control the digital advertising system and determine the reach and audience for news content.

News publishing is the only business mentioned in the First Amendment, and we have been at the forefront of fighting for freedom of speech since well before that amendment was written. Therefore, we approach this issue with seriousness and caution. Section 230 of the Communications Decency Act is an unusual legal protection. Fundamentally, it is a government subsidy that was originally intended to nurture a small and immature online environment. It has since become a huge market distortion that primarily benefits the most successful companies in our economy, to the detriment of other market actors.

However, rather than simply addressing whether Section 230 should be completely preserved or revoked, we believe that it's more important to think about the whole ecosystem for news content and how we can mitigate the negative incentives created by Section 230 and create new incentives that favor quality journalism.

Background

Content moderation is and has always been a complex and nuanced problem. But Section 230 is a not complex or nuanced solution. It is blunt instrument that provides special legal protections for a wide range of commercial behavior. It is also sustained by obsolete ideas about how the internet economy functions.

First, we need to dispense with the idea that accountability and responsibility are inconsistent with business growth. Broad government exemptions from liability certainly make building a business easier, but our history is replete with great companies that have grown and succeeded while also accepting full responsibility for their products and commercial decisions. News publishers, by way of example, have

been legally responsible for their content since at least the 1730s, when the *Crown v. Zenger* decision grappled with the appropriate standard for acceptable speech in newspapers. Yet the responsibility for published content did not hinder the tremendous growth of the news industry in the 19th and 20th centuries. When we were the so-called “information gatekeepers,” we seemed to find a way to both make money and be accountable.

Second, we need to drop the idea that today’s digital “intermediaries” are in any way passive or “dumb pipes.” The days of individually typing “www” web addresses into a portal or browser are long over. The vast majority of digital audiences get to their news through one of the major online platforms – notably Google and Facebook -- and those platforms exercise extreme control over how and whether news is delivered and monetized.

Not only are they not passive, but Google’s and Facebook’s businesses are specifically valued for their capacity to make highly refined, individual content and advertising decisions. They affirmatively curate what news people see and how money is made from it. This algorithmic decision-making is amazing – but also self-interested. Each action represents a commercial choice for the company, and there is nothing wrong with asking them to be responsible for those choices.

In the end, Section 230 has created a deeply distorted variable liability marketplace for media, with one of the largest distortions being that publishers are not compensated for the additional liability they carry. One group of market actors gets the responsibility, and another gets the decision-making authority and most of the money. This separation of accountability from financial return is not only bad for news publishing but for the health of our society. We need to find a better balance.

Section 230 Assumptions

Section 230 is premised on two broad assumptions: 1) that the Good Samaritan provisions encourage good behavior by protecting online platforms when they moderate some limited types of offensive and illegal content; and 2) when someone is harmed by the content published on these platforms, the damaged party can seek remedies from the creators of the content.

Both assumptions have been rendered obsolete due to the evolution of technology. First, the online platforms now use Section 230’s protections not simply to police for harmful content (as determined solely by them) -- but also to protect their ability to exercise extreme editorial control through the algorithms governing what content is exposed and promoted. This editorial control is similar to the control exercised by

publishers and editors over content created by journalists. But unlike news publishers, the platform companies are absolved of all responsibility for their decisions, and therefore have insufficient incentive to promote quality over virality.

Second, Section 230 absolves companies of any accountability for their commercial decisions around promotion and reach. One person may slander another from a street corner with little impact. But an online platform can decide, for its own commercial purposes, to amplify and promote that same speech to hundreds of millions of others in order to increase traffic and, ultimately, profits. That decision about reach is separate from the underlying speech and should carry its own accountability and consequences.

Finally, any online platform that allows for anonymous or pseudonymous speech is intentionally preventing the accountability assumed by Section 230. You can't "sue the speaker" when the system is designed to allow the speaker to hide. These companies may feel that there are commercial and other benefits to the anonymity of their users but, again, that is their commercial choice for which they should then hold responsibility.

And it is absurd and reductive to argue that the platforms have the right to make money by using algorithms to manage billions of interactions -- but they otherwise shouldn't possibly be expected to have any responsibility for those same interactions. If you build it and sell it then you also own the impacts and outcomes from it. It's not up to the rest of us to clean-up the mess.

Absent any accountability by the online platforms, the effect of Section 230 is to create a huge embedded bias favoring false and inflammatory content over quality news and information. We know that made-up garbage will always be cheaper to produce than professional journalism. If the online platforms are free to value each kind of content the same way, then there simply won't be journalism in many communities.

What to do about Section 230

There are some problems in the online ecosystem that revocation of Section 230 would not necessarily solve. First, not all bad information is legally actionable. We have extensive caselaw, going back hundreds of years, on what kinds of speech gives rise to causes of action (defamation, certain threats, etc.). But that doesn't necessarily cover a whole range of speech that we consider extremely bad (many kinds of hostile speech, anti-vaccine messages, etc.) Getting rid of Section 230 won't automatically cause legal liability for many types of speech that we find deeply offensive.

In a related matter, brand and customer expectations have a huge impact on the kind of information that is delivered. For our part, news publishers believe that the value of their brands is centered in *trust* with readers, and that delivering false or dangerous information would damage that trust. Google and Facebook, on the other hand, are the means by which many people receive horrible and deeply dangerous information. Yet these companies obviously don't believe it hurts their brands or there would be more proactive filtering and monitoring. Revocation of Section 230 alone would not necessarily make these companies more sensitive to the well-being of their users or the broader society.

But the safe harbor embedded in Section 230 is clearly part of the problem and we would suggest three approaches as it is revised:

- We shouldn't be afraid to be incremental. The government has allowed one of the largest parts of our economy to be built around a huge subsidy, and it doesn't have to change that all at once.
- As part of that approach, we should start by limiting the exemption for just the very largest companies who both derive the most benefits from Section 230 and have the greatest capacities to take legal responsibility for their commercial decisions around content and reach. With great scale comes great responsibility.
- Finally, we don't need to start from scratch when it comes to defining impermissible speech. Let's start with the existing (and long-standing) standards around defamation and other harmful speech. We then need to continue to work on other business incentives for the online platforms to ultimately value quality content.

In order to further rebalance the relationship between the major platforms and news publishers, we also support the *Journalism Competition & Preservation Act*. This bill would allow news publishers to collectively negotiate with the platforms and return value back to professional journalism. If done right, this could also drive business incentives for the platforms to value quality journalism over overtly bad sources of information about our world and our communities.

Willard, Lauren (OAG)

From: Willard, Lauren (OAG)
Sent: Monday, May 18, 2020 1:43 PM
To: Guarnieri, Matthew (OSG); Whitaker, Henry C. (OLC); Wallace, Benjamin (OLC); Grieco, Christopher (ODAG); Pandya, Brian (OASG); Shores, Ryan (ODAG)
Subject: RE: Dyroff, Force - denied
Attachments: 20200511125322450_No. 19-__ Malwarebytes Petition 5-11 Final.pdf

Deliberative Process / Pre-Decisional / Privileged & Confidential

Thanks Matt!

I noticed another Section 230 petition that ma (b) (5). This involves th (b) (5). I need to review more closely, but my initial view is th (b) (5).

Given the posture, I'm not sur (b) (5). This may also hel (b) (5).

Best,
Lauren

From: Guarnieri, Matthew (OSG) (b) (6) >
Sent: Monday, May 18, 2020 9:48 AM
To: Willard, Lauren (OAG) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >; Wallace, Benjamin (OLC) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >; Pandya, Brian (OASG) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >
Subject: Dyroff, Force - denied

Hi folks,

FYI, the Supreme Court denied the petitions in *Force* and *Dyroff* this morning, without CVSG'ing.

Matt

Matthew Guarnieri
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No. 19-

IN THE
Supreme Court of the United States

MALWAREBYTES, INC.,
Petitioner,

v.

ENIGMA SOFTWARE GROUP USA, LLC,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Section 230(c)(2)(B) of the Communications Decency Act provides immunity from most civil liability to computer-service providers for “any action taken to enable or make available to * * * others the technical means to restrict access to material” that “the provider or user considers to be * * * objectionable.” 47 U.S.C. § 230(c)(2). The court below agreed that none of the narrow, express exceptions to that immunity in Section 230(e) apply here. The question presented is:

Whether federal courts can derive an implied exception to Section 230(c)(2)(B) immunity for blocking or filtering decisions when they are alleged to be “driven by anticompetitive animus.”

PARTIES TO THE PROCEEDING

Malwarebytes, Inc., petitioner on review, was the defendant-appellee below.

Enigma Software Group USA, LLC, respondent on review, was the plaintiff-appellant below.

RULE 29.6 DISCLOSURE STATEMENT

Malwarebytes, Inc. has no parent corporation, and no publicly held company owns 10% or more of its stock.

RELATED PROCEEDINGS

U.S. Court of Appeals for the Ninth Circuit:

Enigma Software Group USA, LLC v. Malwarebytes, Inc., No. 17-17351 (9th Cir. Dec. 31, 2019) (reported at 946 F.3d 1040)

Enigma Software Group USA, LLC v. Malwarebytes, Inc., No. 17-17351 (9th Cir. Sep. 12, 2019) (reported at 938 F.3d 1026) (opinion withdrawn and superseded on denial of rehearing)

U.S. District Court for the Northern District of California:

Enigma Software Group USA LLC v. Malwarebytes Inc., No. 5:17-cv-02915-EJD (N.D. Cal. Nov. 7, 2017) (unreported)

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IN THE
Supreme Court of the United States

No. 19-

MALWAREBYTES, INC.,
Petitioner,

v.

ENIGMA SOFTWARE GROUP USA, LLC,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

PETITION FOR A WRIT OF CERTIORARI

Malwarebytes, Inc., respectfully petitions for a writ of certiorari to review the judgment of the Ninth Circuit in this case.

OPINIONS BELOW

The Ninth Circuit's amended opinion, issued on denial of rehearing, is reported at 946 F.3d 1040. Pet. App. 1a-29a. Its original, superseded opinion is reported at 938 F.3d 1026. Pet. App. 30a-56a. The district court's order granting Malwarebytes's motion to dismiss is unreported. *Id.* at 57a-65a.

JURISDICTION

The Ninth Circuit entered judgment on September 12, 2019. Pet. App. 1a, 30a. Malwarebytes timely

(1)

petitioned for panel rehearing and rehearing en banc, which were denied on December 31, 2019. *Id.* at 1a, 4a-5a. Justice Kagan extended the time to file a petition for certiorari to May 11, 2020. This Court’s jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 230(c)(2) of the Communications Decency Act, 47 U.S.C. § 230(c)(2), provides that:

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 considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, 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 paragraph (1).

The entirety of Section 230 is reproduced in the appendix to this petition, Pet. App. 66a-71a, as is the text of Section 230 as it appeared before its 2018 amendments, *id.* at 72a-76a.

INTRODUCTION

The Communications Decency Act (CDA) is foundational to the Internet as we know it. Faced with a revolutionary new technology, Congress chose a system of self-regulation—one that would leave users, rather than governments or courts, in control

of their own experience. The cornerstone of that system is the immunity from civil liability provided in Section 230(c). Through that provision, Congress ensured that Internet providers and users would be free from the constant threat of litigation for moderating threatening or objectionable content. Of course, that would be impossible without adequate tools for screening and filtering content. Thus, in Section 230(c)(2)(B), Congress extended that immunity—without qualification—to providers for “any action taken to enable or make available” the “technical means to restrict access to” content the provider “considers to be” objectionable. 47 U.S.C. § 230(c)(2).

Petitioner Malwarebytes, Inc., is a leading software security firm that provides filtering tools to consumers. Its software flags security threats and other unwanted programs, and asks users whether they wish to retain those programs. After an update to Malwarebytes’s software began flagging Respondent’s products as potentially unwanted programs and providing its users the choice to use or to quarantine the products, Respondent sued Malwarebytes. The plain text of the Act forbids exactly this kind of retaliatory suit.

In the decision below, however, a divided panel of the Ninth Circuit read the Act to contain an implied exception for actions allegedly motivated by “anti-competitive animus.” To its credit, the court did not even try to justify that reading based on the text of the statute. Instead, the court relied exclusively on its own mistaken understanding of the policy interests at stake.

This Court's precedents flatly forbid that approach. In recent decades, this Court has instructed lower courts that statutory interpretation must be guided, first and foremost, by the text, and that even compelling policy considerations cannot justify an interpretation that runs counter to the text. The decision below defies that cardinal rule. It is therefore no surprise that—in both its reasoning and holding—the decision breaks from decisions of numerous other courts. And the conflict has only gotten worse in the short time since the court issued its decision, as a California state court has already issued a decision expressly disagreeing with it—opening a rift between state and federal fora in the technology center of the Nation.

It is critically important for the Court to correct the Ninth Circuit's erroneous interpretation now. By exposing developers of filtering tools to a flood of retaliatory litigation, the decision will have the opposite effect from Congress's goal of promoting development of such tools. Making matters worse, because the Ninth Circuit relied solely on policy considerations that apply to all of Section 230, its decision threatens *all* of Section 230(c)'s immunities. It is an open invitation for lower courts to allow a lawsuit anytime judges have their own policy concerns about a particular filtering decision or tool. The decision below thus risks exposing cybersecurity firms, as well as the most popular Internet services, to a raft of burdensome litigation for providing the filtering tools and exercising the content-moderation and editorial discretion that Congress sought to encourage. The result will be an Internet with less

consumer choice and less protection for users from offensive and objectionable content.

The decision below is a throwback to “a bygone era of statutory construction,” when judges looked primarily to ill-defined indicia of congressional intent rather than statutory text. *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019) (internal quotation marks omitted). The Court should grant certiorari to correct the Ninth Circuit’s “casual disregard of the rules of statutory interpretation” and bring it back in line with the prevailing interpretations of Section 230. *Id.*

The petition should be granted.

STATEMENT

A. Statutory Background

The CDA emerged in 1996 as a response to the proliferation of offensive content on the nascent Internet. Congress sought an innovative approach for this new technology, one that would let “Government * * * get out of the way and let parents and individuals” “tailor what [they] see to [their] own tastes.” 141 Cong. Rec. 22,045 (1995) (statement of Rep. Cox). The resulting Act therefore aimed “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 “to remove disincentives for the development and utilization of blocking and filtering technologies.” 47 U.S.C. § 230(b)(3), (4).

Congress identified the threat of litigation as a particular obstacle to the development of “blocking and filtering technologies.” *See* Pet. App. 8a-10a.

Early state-court decisions had made it challenging for Internet-based firms to take action against offensive or dangerous content by exposing those who did to liability. *See id.* (discussing *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, No. 31063/94, 1995 WL 323710 (N.Y. Sup. Ct. 1995)).

The operative text of the CDA took a three-pronged approach to eliminating the threat of such litigation.

First, in subsection (c)(1), Congress addressed immunity for hosting third-party content. It ensured that “[n]o 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.” 47 U.S.C. § 230(c)(1). That provision bars suits seeking to hold providers liable for exercising “a publisher’s traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content.” *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997).

Second, in subsection (c)(2)(A), Congress provided immunity for those who block or filter content. Specifically, it barred civil liability against “provider[s]” and “user[s] of an interactive computer service” who take 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.” 47 U.S.C. § 230(c)(2)(A). That immunity is available for “any action,” so long as it is “voluntarily taken in good faith.” *Id.*

Third—and most relevant here—in subsection (c)(2)(B), Congress extended immunity to entities that develop and provide the technology necessary

for filtering and blocking content. That immunity covers “any action taken to enable or make available * * * the technical means to restrict access to” the material described in subsection (c)(2)(A),¹ *id.* § 230(c)(2)(B)—that is, “material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable,” *id.* § 230(c)(2)(A). Unlike the immunity for those who themselves “*restrict* access to or availability of” such material, the immunity for developers of filtering technology is not conditioned on “good faith.” *Compare id.* (emphasis added), *with id.* § 230(c)(2)(B).

Congress also provided a handful of exceptions to the CDA’s immunity, including with respect to intellectual property laws and communications privacy laws. *See, e.g., id.* § 230(e)(2), (4). None of those exceptions refers to antitrust law or “anticompetitive” behavior. *See id.* § 230(e).

B. Procedural Background

1. Malwarebytes is an Internet security firm with an international customer base. Pet. App. 12a. Users download its software to protect themselves from a wide array of threats on the Internet. These include “malware,” which can damage operating systems or steal user information, and “Potentially Unwanted Programs” (or “PUPs”) that falsely de-

¹ As enacted, the text cross-references subsection (c)(1), *see* 47 U.S.C. § 230(c)(2)(B), but that is uniformly regarded as a scrivener’s error, *see Zango, Inc. v. Kaspersky Lab, Inc.*, 568 F.3d 1169, 1173 n.5 (9th Cir. 2009).

ceive users into thinking something is wrong with their computer so that they will download paid products to combat the supposed threats. *See id.* When Malwarebytes’s “software detects an unwanted program, it displays a notification and asks the user if she wants to remove the program from her computer.” *Id.* at 58a. In other words, users make the final decision about what gets filtered.

In October 2016, Malwarebytes adopted new criteria for identifying a PUP. *Id.* at 12a-13a. Using those criteria, Malwarebytes’s software began classifying certain products of Respondent Enigma Software Group as a PUP. *Id.* As with any PUP, Malwarebytes’ software gave users the option to retain, quarantine, or remove Enigma’s products. *Id.* at 12a-13a, 58a.

2. Enigma sued Malwarebytes, alleging state-law business torts and unfair advertising in violation of the Lanham Act. *Id.* at 58a-59a. Malwarebytes moved to dismiss, invoking Section 230(c)(2)(B)’s immunity for providers of filtering software. *Id.* at 14a. Enigma opposed the motion, claiming “that Malwarebytes blocked Enigma’s programs for anti-competitive reasons” and that the CDA’s immunity is unavailable under such circumstances. *Id.* at 19a.

The District Court granted Malwarebytes’s motion. *Id.* at 65a. It held that “the plain language of the statute” requires only that “*the provider* or user consider[.]” the filtered material “objectionable.” *Id.* at 62a (quoting 47 U.S.C. § 230(c)(2)). Thus, it was irrelevant *why* Malwarebytes considered Enigma’s products “objectionable.” *See id.* The court noted that the neighboring provision addressing immunity

for those who actually “restrict access” to content “include[s] a good-faith requirement.” *See id.* at 63a (discussing 47 U.S.C. § 230(c)(2)(A)). Because Congress “chose not to” “include[] a similar reference” to good faith in subsection (c)(2)(B), the court declined to find a similar exception implied there. *Id.*

3. A divided panel of the Ninth Circuit reversed. *Id.* at 27a. Looking to the “history and purpose” of the CDA, *id.* at 19a, the majority held that Section 230(c)(2)’s immunity provisions contain an unstated exception for “decisions that are driven by anticompetitive animus,” *id.* at 11a. Although the court acknowledged that its reading was in tension with “the unwillingness of Congress to spell out the meaning of ‘otherwise objectionable,’” it felt obliged to update the statute for “today” by reading it not “to give providers unbridled discretion to block online content.” *Id.* at 20a. Although the court did not explain how its reading was compatible with the operative text of the statute or the ordinary meaning of the word “objectionable,” it found support for its reading in “the statute’s express policies.” *Id.* at 20a-21a.²

Judge Rawlinson dissented. The majority’s reading, she explained, “cannot be squared with the broad language of the Act.” *Id.* at 29a. “Under the language of the statute, if the blocked content is

² Separately, the court rejected Enigma’s argument that its Lanham Act false-advertising claim falls within the CDA’s exception for “intellectual property” law. Pet. App. 23a-27a. Malwarebytes does not seek review of this issue.

‘otherwise objectionable’ to the provider, the Act bestows immunity.” *Id.* (quoting *Zango*, 568 F.3d at 1173). “The majority’s real complaint,” the dissent pointed out, “is not that the district court construed the statute too broadly, but that the statute is written too broadly.” *Id.* at 28a. Such an issue “is one beyond [judicial] authority to correct.” *Id.*

Over Judge Rawlinson’s dissent, the Ninth Circuit denied Malwarebytes’s petition for rehearing and rehearing en banc. *Id.* at 4a-5a.³ This timely petition followed.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW DEFIES THIS COURT’S BASIC RULES OF STATUTORY INTERPRETATION AND DEVIATES FROM COURTS’ SETTLED UNDERSTANDINGS OF SECTION 230.

One of this Court’s most fundamental precepts is that statutory interpretation must begin with the text—and end there when the text is clear. This Court has repeatedly granted certiorari to clarify that principle. *See, e.g., Food Mktg. Inst.*, 139 S. Ct. at 2364 (“We cannot approve such a casual disregard of the rules of statutory interpretation.”).

³ The panel issued an amended opinion that modified a sentence suggesting that immunity would be unavailable *anytime* a decision was motivated by “the identity of the entity that produced” the filtered content. *Compare* Pet. App. 39a, *with id.* at 11a-12a. It made no other changes.

The Ninth Circuit flouted that rule in this case. The court never explained how its reading bears any relationship to the operative text of the statute. Instead, it relied exclusively on its own policy concerns (which were themselves questionable). Unsurprisingly, that fundamentally flawed approach led the court to the wrong outcome in this case.

Not only did the Ninth Circuit's approach defy this Court's precedent, it upended the widely-shared consensus among lower courts that Section 230's immunity provisions should be read broadly. The court also broke from the D.C. Circuit by using the CDA's prefatory statutory goals to override its operative text, and the resulting interpretation of subsection (c)(2)(B) has been flatly rejected by state courts in the very same State where this litigation arose, California. These conflicts on an issue of critical importance further counsel this Court's intervention.

A. The Decision Below Erroneously Relied On Policy Rather Than Text To Interpret Section 230.

1. “[I]n any statutory construction case,” a court must “start, of course, with the statutory text.” *Sebelius v. Cloer*, 569 U.S. 369, 376 (2013) (quoting *BP Am. Prod. Co. v. Burton*, 549 U.S. 84, 91 (2006)). This Court's cases insisting on that approach are legion. *See, e.g., Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 461-462 (2002) (“We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.”).

“When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete.” *Id.* at 462 (internal quotation marks omitted). A statute’s text is not “ambiguous” merely because it uses “[b]road general language.” *Diamond v. Chakrabarty*, 447 U.S. 303, 315 (1980). Only after examining “the text of the provision in question” and discerning a genuine ambiguity may a court “move on, as need be, to the structure and purpose of the Act in which it occurs.” *N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995); accord *Food Mktg. Inst.*, 139 S. Ct. at 2364 (finding it “inappropriate[]” to “resort to legislative history before consulting [a] statute’s text and structure”). Courts “[l]ack[] the expertise or authority to assess the[] important competing claims” involved in policy disputes, which are “best addressed to the Congress.” *Dunn v. Commodity Futures Trading Comm’n*, 519 U.S. 465, 480 (1997). And, critically, “[p]olicy considerations cannot override [an] interpretation of the text and structure of [an] Act.” *Cent. Bank of Denver, N.A., v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 188 (1994).

2. The Ninth Circuit broke sharply from this method of statutory interpretation. It started with its view of the statute’s “history and purpose,” not text. Pet. App. 19a. Indeed, the court apparently recognized that its approach was *incompatible* with Section 230’s text: It took note of Congress’s “unwillingness * * * to spell out the meaning of ‘otherwise objectionable,’” and acknowledged that the text confers a “broad grant of protective control” to Internet providers. *Id.* at 20a.

Although the court linked its reading of the statute to the word “objectionable,” *id.* at 23a, that relationship was not based on the “ordinary * * * meaning” of the term, as this Court’s cases require, *Wisconsin Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2074 (2018) (internal quotation marks omitted). The Ninth Circuit did not, for example, consider a definition of the term, or examine its meaning in other contexts. Instead, the court relied exclusively on two judges’ perspective of the underlying policy interests. Pet. App. 20a (expressing concern that “[u]sers would not reasonably anticipate providers blocking valuable online content”). In fact, the court properly *rejected* Enigma’s only argument based on the meaning of the word “objectionable.” *See id.* at 21a (refusing to apply *ejusdem generis* to narrow the meaning of “objectionable” given the “breadth of the term” and the lack of similarity among subsection (c)(2)’s “enumerated categories”).

By reading an unstated exception into the Act, the Ninth Circuit ignored a tried-and-true canon of textual analysis. “Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” *Russello v. United States*, 464 U.S. 16, 23 (1983) (internal quotation marks and alteration omitted). Here, Congress included a “good faith” requirement to claim immunity under subsection (c)(2)(A). The absence of any similar language indicates the “intentional[] * * * exclusion” of any similar motive-based requirement for subsection (c)(2)(B)’s immunity.

Malwarebytes made this point in its appellate brief, Malwarebytes C.A. Answering Br. 29-30, and rehearing petition, C.A. Reh’g Pet. 11-12. Yet the panel majority failed to even acknowledge it.

The court’s sole justification for bypassing all of these bedrock rules of construction was policy. Pet. App. 19a-21a. Under this Court’s precedent, that is no justification at all. Courts have “no roving license, in even ordinary cases of statutory interpretation, to disregard clear language simply on the view that * * * Congress ‘must have intended’ something” else. *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 794 (2014); see also *Romag Fasteners, Inc. v. Fossil Grp., Inc.*, __ S. Ct. __, slip op. at 7 (2020) (“[T]he place for reconciling competing and incommensurable policy goals * * * is before policymakers.”). The Ninth Circuit suggested that its emphasis on policy might be justified by Congress’s inclusion of policy statements in the CDA. See Pet. App. 11a, 20a-21a. Wrong again. Congressional findings are too “thin” a “reed upon which to base” an exception for “motive” that is “neither expressed nor * * * fairly implied in the operative sections of the Act.” *Nat’l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 260 (1994).

Making matters worse, the policy concern animating the majority was wholly unfounded. The panel feared that users would lose access to “valuable online content” because providers might “act for their own, and not the public, benefit.” Pet. App. 20a. But Congress anticipated this very issue. This case concerns immunity under subsection (c)(2)(B), which applies only to entities that empower *others* to filter

content by supplying the “technical means” to do so. 47 U.S.C. § 230(c)(2)(B). The majority’s concern is directed to those who “restrict access to or availability of material” under subsection (c)(2)(A), and that immunity is available only to those who act “in good faith.” *Id.* § 230(c)(2)(A).⁴ The majority’s apparent confusion about this elementary issue only reinforces this Court’s longstanding position that courts are “ill suited” “to make * * * policy judgments.” *Perry v. Perez*, 565 U.S. 388, 393 (2012) (per curiam); *see also infra* pp. 21-29 (explaining why Malwarebytes’s position better comports with Congress’s stated policies to promote competition and user choice).

3. The Ninth Circuit’s deeply flawed approach to statutory construction led it to an erroneous result. Under a plain-meaning analysis of Section 230’s “broad language,” Pet. App. 29a (Rawlinson, J., dissenting), Malwarebytes is entitled to immunity under subsection (c)(2)(B).

That provision immunizes (1) a “provider or user of an interactive computer service” that (2) offers to “others the technical means to restrict access to material” that (3) “the provider or user considers * * * harassing [] or otherwise objectionable.” 47 U.S.C. § 230(c)(2). Only the third element was contested here, which makes sense: Malwarebytes’s software is plainly an interactive computer service,

⁴ Because Malwarebytes only claims immunity under subsection (c)(2)(B), Malwarebytes takes no position on whether the conduct alleged by Enigma in this case would fall short of the “good faith” required by subsection (c)(2)(A).

and it operates by giving users the “technical means,” *id.* § 230(c)(2)(B), “to remove [a flagged] program from her computer,” Pet. App. 58a.

That leaves only whether Enigma’s products are “material that the provider” (here, Malwarebytes) “considers to be * * * objectionable.” 47 U.S.C. § 230(c)(2)(A). Enigma’s complaint answers that question in the affirmative by conceding that Malwarebytes considers Enigma’s products “PUPs and ‘threats.’” C.A. E.R. 24. Because the Act requires only that Malwarebytes “considers” the content to be “objectionable,” that determination is sufficient for immunity to apply. The “ordinary, contemporary, common meaning,” *Wisconsin Cent.*, 138 S. Ct. at 2074 (internal quotation marks omitted), of “objectionable” is easily capacious enough to encompass programs that Malwarebytes has deemed a “threat” or a “potentially unwanted program.” *See, e.g.*, Webster’s II New College Dictionary (1995 ed.) (defining “objectionable” as “[p]rovoking disapproval or opposition: offensive”); The American Heritage College Dictionary (3d ed. 1993) (similar definition). Section 230(c)’s caption reinforces that reading. *See Yates v. United States*, 574 U.S. 528, 539-540 (2015) (plurality op.). It clarifies the provision is meant to protect “blocking and screening of *offensive* material,” even though the word “offensive” is not one of the enumerated categories in § 230(c)(2)’s list. 47 U.S.C. § 230(c) (emphasis added).

Because the Ninth Circuit only reached a contrary decision by disregarding this Court’s rules for statutory interpretation, this Court’s review is warranted. *See* Sup. Ct. R. 10(c). Allowing the decision below to

stand will embolden lower courts to carve out additional policy-driven exceptions to Congress's duly-enacted legislation. *See infra* pp. 31-35.

B. The Decision Below Splits From The Approach Of Numerous Other Courts.

Given how starkly the decision below deviates from this Court's precedents, it is no surprise that it renders the Ninth Circuit an outlier on Section 230 immunity.

1. Outside of the Ninth Circuit, courts are in agreement that Section 230's immunity provisions must be read expansively. As the Seventh Circuit has explained, that conclusion flows from Congress's choice to use broad language: "[T]he reason a legislature writes a general statute is to avoid any need to traipse through the United States Code" and state lawbooks to "consider all potential sources of liability, one at a time." *Chicago Lawyers' Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F.3d 666, 671 (7th Cir. 2008). Courts have widely honored that choice in the context of Section 230. *Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12, 18 (1st Cir. 2016) ("There has been near-universal agreement that section 230 should not be construed grudgingly."); *Force v. Facebook*, 934 F.3d 53, 64 (2d Cir. 2019) (noting "general agreement" that the CDA "should be construed broadly in favor of immunity"), *petition for cert. filed*, No. 19-859 (U.S. Jan. 2, 2020); *Zeran*, 129 F.3d at 331 (referring to "§ 230's broad immunity"); *Hassell v. Bird*, 420 P.3d 776, 788 (Cal. 2018) (plurality op.) ("the tools of statutory interpretation compel[] a broad construction of section 230"); *Shiamili v. Real Estate Grp. of N.Y., Inc.*, 952 N.E.2d

1011, 1016 (N.Y. 2011) (“Both state and federal courts around the country have generally interpreted Section 230 immunity broadly * * *.” (internal quotation marks omitted)); *accord Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008); *Johnson v. Arden*, 614 F.3d 785, 791 (8th Cir. 2010); *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006); *Marshall’s Locksmith Serv. Inc. v. Google, LLC*, 925 F.3d 1263, 1267 (D.C. Cir. 2019).⁵

The decision below, however, takes the opposite approach. Motivated by policy concerns, it discerned “limitations in the scope of immunity” found nowhere in the Act’s text. Pet. App. 18a. The Ninth Circuit therefore eschewed the broad reading of Section 230 adopted by other courts. And this is not the first time that the Ninth Circuit has resorted to policy arguments to give the CDA a narrow construction. *See Doe v. Internet Brands, Inc.*, 824 F.3d 846, 851-853 (9th Cir. 2016) (reading the Act to have a “narrow language and * * * purpose”). This decision cements the court’s outlier status.

2. The decision below also places the Ninth Circuit in square conflict with the D.C. Circuit regarding the proper relationship of Section 230’s express policy goals, *see* 47 U.S.C. § 230(b), with its operative text, *see id.* § 230(c)-(e). The panel repeatedly—and selectively—resorted to subsection (b)’s policy goals

⁵ Although some of these decisions speak specifically in terms of subsection (c)(1), that merely reflects the facts of those cases. Nothing in the opinions’ reasoning suggests the broad reading is limited to that subsection.

to justify its atextual approach to statutory construction. See Pet. App. 20a-21a (citing 47 U.S.C. § 230(b)(3), (4)).

The D.C. Circuit has rejected that analytical approach. In *Comcast Corp. v. Federal Communications Commission*, 600 F.3d 642 (D.C. Cir. 2010), the FCC argued that it possessed regulatory power over “an Internet service provider’s network management practices.” *Id.* at 644. Lacking any “express statutory authority over such practices,” *id.*, the Commission turned to the policy goals enacted in subsection (b) of the CDA, claiming those goals could “anchor the exercise of [regulatory] authority” even without an express grant of power. *Id.* at 652. The D.C. Circuit rejected that argument, holding that “statements of policy, by themselves, do not create ‘statutorily mandated responsibilities.’” *Id.* at 644. The alternative approach, the court explained, would “virtually free the Commission from its congressional tether.” *Id.* at 655. The D.C. Circuit’s approach is flatly at odds with Enigma’s efforts to carve out an exception to the “statutorily mandated” immunity by relying on the CDA’s “policy statements alone.” *Id.* at 644, 654 (internal quotation marks omitted).

3. In near-record time, the Ninth Circuit’s holding has provoked disagreement with a California state court. Just a few weeks after the panel issued its original decision, the California Superior Court issued an opinion “disagree[ing]” with the panel’s approach, finding that it “ignore[d] the plain language of the statute by reading a good faith limitation into section 230(c)(2)(B).” *Prager Univ. v. Google LLC*, No. 19CV340667, 2019 WL 8640569, at *10

(Cal. Super. Ct. Nov. 19, 2019), *appeal docketed*, No. H047714 (Cal. Ct. App. Dec. 19, 2019). That holding led the court to reject a video-maker’s claim that YouTube acted in bad faith by allowing users—such as parents, school administrators, or libraries—to enable a “Restricted Mode” that filters certain sensitive content, such as graphic violence and sexual material. *Id.* at *2, *4, *9-10.

Existing California precedent concerning Section 230 assures that decision will be affirmed. The California Court of Appeal has already held, in a different case, that “Section 230 imposes a subjective element into the [immunity] determination” by conferring immunity “so long as [the developer of the filter] *deemed* the material to be * * * objectionable.” *Pallorium, Inc. v. Jared*, No. G036124, 2007 WL 80955, at *7 (Cal. Ct. App. Jan. 11, 2007) (emphasis added and internal quotation marks omitted). And that reading comports with the California Supreme Court’s instruction to interpret Section 230 “literally” according to its text. *Barrett v. Rosenthal*, 146 P.3d 510, 529 (Cal. 2006). Thus, there is nothing to be gained by postponing consideration of the question presented. Delay would also be harmful given the high risk of forum shopping: Because California is located within the Ninth Circuit—and home to the Nation’s hub of technological development—plaintiffs now have every incentive to bring suit in federal courts. Certiorari is necessary to eliminate that risk.

II. THE QUESTION PRESENTED IS OF SUBSTANTIAL IMPORTANCE.

Even if the CDA’s text left any ambiguity to be resolved by reference to policy, the Ninth Circuit

profoundly misunderstood how those considerations apply to this case. In fact, the decision below undermines Congress's stated goals in enacting the CDA. It is therefore vital for the Court to address the question presented now. Otherwise, this interpretation will fester—and in the circuit where Section 230 matters the most.

Congress's central goal in enacting Section 230 was to promote a vibrant marketplace to give users tools to provide a safe Internet experience for themselves and their families, without interference by state and federal regulation. By allowing plaintiffs to undermine the immunity granted by Section 230(c)(2)(B) and subjecting filtering-tool providers to prolonged and costly litigation, the Ninth Circuit's opinion accomplishes the opposite by interposing courts as regulators between Internet users and their choice of filtering tools.

Worse still, there is no logical limit to the Ninth Circuit's reasoning. Its ruling invites judges to chip away at all of Section 230(c)'s immunities, including the oft-invoked immunity of 230(c)(1) that protects websites from liability for third-party content. And because the Ninth Circuit's opinion is rooted in policy considerations unmoored from specific statutory text, it invites courts to impose additional policy-driven exceptions beyond the competition context.

A. The Decision Below Threatens The User Choice And Internet Security Goals That Motivated Section 230(c)(2)(B).

1. Congress's goal in enacting Section 230, and especially 230(c)(2)(B), was to put Internet users in

the driver's seat of their own online experience by allowing them to choose the filtering tools that best fit their needs without government interference. Congress recognized that services such as Malwarebytes's "offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops," and that the "Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation." 47 U.S.C. § 230(a)(2), (4). Congress thus declared that "the policy of the United States" is "to preserve the vibrant and competitive free market that presently exists for the Internet * * *, unfettered by Federal or State regulation"; "to encourage the development of technologies which maximize user control over what information is received"; and "to remove disincentives for the development and utilization of blocking and filtering technologies." *Id.* § 230(b)(2)-(4). As one of the bill's co-sponsors, Representative Chris Cox, explained, "every one of us will be able to tailor what we see to our own tastes" based on Section 230's promotion of a vibrant free market in filtering technology. 141 Cong. Rec. 22,045 (1995) (statement of Rep. Cox). In fact, Section 230 was introduced as a user-driven alternative to a bill that sought to combat offensive content through top-down government regulation. *See* Pet. App. 9a-11a.⁶

⁶ Both provisions were enacted, but Section 230's government-regulation-based rival was largely invalidated by this Court for

As Judge Wilkinson put it in the first major circuit court decision on Section 230—since widely adopted by other courts—Congress created a “broad immunity” “to encourage service providers to self-regulate the dissemination of offensive material.” *Zeran*, 129 F.3d at 331; *accord Jane Doe No. 1*, 817 F.3d at 29 (“Congress did not sound an uncertain trumpet when it enacted the CDA, and it chose to grant broad protections * * *. Showing that a website operates through a meretricious business model is not enough to strip away those protections.”). Part of Congress’s motivation was to overrule a New York state court opinion, under which “computer service providers who regulated the dissemination of offensive material on their services risked subjecting themselves to liability, because such regulation cast the service provider in the role of a publisher.” *Zeran*, 129 F.3d at 331 (discussing *Stratton Oakmont*, 1995 WL 323710); *see also* Pet. App. 9a-10a; H.R. Conf. Rep. No. 104-458, at 194 (1996), *as reprinted in* 1996 U.S.C.C.A.N. 10, 208. The statutory findings, policy statements, and legislative history thus all indicate a desire to let the market, and not courts, decide how content should be filtered.

But the Ninth Circuit’s decision upsets the immunity that Congress created to achieve that goal. In place of the “broad immunity” prescribed by Congress, the Ninth Circuit has authorized courts to abrogate immunity for filtering decisions that, in the

violating the First Amendment. *See Reno v. ACLU*, 521 U.S. 844, 877-879 (1997).

court's opinion, Congress would not have wanted to protect. *See* Pet. App. 22a. Under that reasoning, any plaintiff can potentially convince a court to craft an exception for a particular set of facts or alleged motivation, thereby exposing the defendant to the whole panoply of state and federal statutory and common law causes of action that Congress sought to preempt. *See id.* at 13a-14a. So much for providers of filtering tools being “unfettered by Federal or State regulation.” 47 U.S.C. § 230(b)(2).

2. The possibility that a defendant will ultimately prove that it acted with motives a court would consider pure is little comfort. Congress created an *immunity* from suit precisely because, as Judge Wilkinson observed, it “recognized the threat that tort-based lawsuits pose” and so enacted Section 230 “to maintain the robust nature of Internet communication and, accordingly, to keep government interference in the medium to a minimum.” *Zeran*, 129 F.3d at 330. As the same court later elaborated, “immunity is an *immunity from suit* rather than a mere defense to liability and it is effectively lost if a case is erroneously permitted to go to trial.” *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 254 (4th Cir. 2009) (internal quotation marks omitted). For that reason, “Section 230 immunity” should be “accorded effect at the first logical point in the litigation process.” *Id.* In other contexts, this Court has recognized that immunities are not “merely *** a defense to monetary liability,” but rather “an immunity from suit” altogether, *Fed. Mar. Comm’n v. S.C. State Ports Auth.*, 535 U.S. 743, 766 (2002) (sovereign immunity), and “an entitlement not to

stand trial or face the other burdens of litigation,” *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) (qualified immunity).

If not afforded immunity from suit altogether, Internet services will “face death by ten thousand duck-bites.” *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1174 (9th Cir. 2008) (en banc). That is why “section 230 must be interpreted to protect websites not merely from ultimate liability, but from having to fight costly and protracted legal battles.” *Id.* at 1175.

The danger of abusive litigation in this area is no idle threat. That is because litigious malware purveyors can easily use the exception recognized by the Ninth Circuit to plead around Section 230(c)(2)(B) at the motion-to-dismiss stage. The decision below exacerbates that problem by setting a low bar for what a putative competitor must allege. *See* Pet. App. 23a (accepting Enigma’s claims of “anticompetitive” behavior without enumerating specific facts).

It is not difficult for a purveyor of malware to brand themselves as an anti-malware provider by combining purported security features with objectionable material. For example, in an earlier Ninth Circuit case, the plaintiff combined a supposed “[s]pam [b]locker” with noxious adware that bombarded users with pop-up ads. *Zango*, 568 F.3d at 1170. After the decision below, any purveyor of malware and adware now has a playbook to overcome Section 230(c)(2)(B) simply by adding a purported security feature to their obnoxious software.

Even if the text of Section 230(c)(2)(B) gave courts license to second-guess the motivations for internet-

security firms' classification decisions, judges would be poorly positioned to do so. There are numerous valid reasons Internet-security firms may flag putatively competitive software as a threat. Even well-known brands have had security vulnerabilities or unexpectedly caused computers to slow down,⁷ which could justify a potentially-unwanted-program label. More pernicious is fake antivirus software, a common problem that has been a target of government enforcement. Examples include a \$163 million judgment the FTC obtained against an outfit that sold "scareware" to "trick consumers into thinking their computers were infected with malicious software, and then sold them software to 'fix' their non-existent problem"⁸; as well as a \$35 million settlement with the well-known retailer Office Depot for marketing similar "scamware" that "tricked customers into buying millions of dollars' worth of computer repair and technical services by deceptively claiming their software had found malware symptoms on the customers' computers."⁹ These firms could write a

⁷ See, e.g., Eric Griffith, *How to Rid a New PC of Crapware*, PCMag (Apr. 1, 2020), <https://bit.ly/3ch9BMM> (explaining that a well-known antivirus program is "likely to slow [a user's] PC").

⁸ Press Release, FTC, *FTC Case Results in \$163 Million Judgment Against "Scareware" Marketer* (Oct. 2, 2012), <https://bit.ly/3bjkJIx>.

⁹ Press Release, FTC, *Office Depot and Tech Support Firm Will Pay \$35 Million to Settle FTC Allegations That They Tricked Consumers into Buying Costly Computer Repair Services* (Mar. 27, 2019), <https://bit.ly/3afWpWH>.

self-serving complaint like Enigma's to circumvent Section 230(c)(2)(B)'s immunity for cybersecurity firms that seek to protect consumers from these threats.

3. Congress instead intended consumers and their cybersecurity providers to evaluate Internet threats for themselves. By inviting courts to interpose themselves between consumers and cybersecurity services, the Ninth Circuit's decision threatens consumer choice and Internet security.

Purported "competitors" may in fact be legitimate threats to Internet users. *See supra* p. 26 & n.8. Moreover, with millions of potential threats on the Internet, it is impossible for filtering-software companies to individually analyze every potential danger to users. As the Electronic Frontier Foundation (EFF) and CAUCE North America, Inc. explained below, filtering software requires the use of automated algorithms to predict threats, which may sometimes flag potentially competitive software. EFF et al. C.A. *Amicus* Br. 9-10; *see also* ESET, LLC C.A. *Amicus* Br. 7-8 (explaining that Malwarebytes's competitor ESET "encounter[s] more than 300,000 new unique and suspicious objects every day" and that "it is not possible to sort through threats and other objectionable programs one by one and give deference to those that might plausibly claim to be competitors").

The Ninth Circuit's decision puts cybersecurity firms in a predicament. They can try their best to protect consumers against all threats, knowing that they will subject themselves to expensive lawsuits when they designate an alleged competitor as a

threat—either forcing them out of business or raising prices for consumers. Or they can avoid liability by taking a more permissive stance, exposing customers to threats. In either case, consumers end up with an inferior Internet experience. And facing such a choice, new firms may be dissuaded from entering the cybersecurity market altogether—exactly the opposite of what Congress wanted.

There is no need for those dire results. Section 230 has worked just as Congress intended to promote competition in filtering technology. Enigma’s own complaint identified over 40 competing cybersecurity companies. C.A. E.R. 39.¹⁰ The Ninth Circuit’s justification for its policy-driven exception to Section 230(c)(2)(B) was a fear that such firms would “act for their own, and not the public, benefit” by adopting “filtering practices aimed at suppressing competition, rather than protecting internet users.” Pet. App. 20a. In the “vibrant and competitive free market that presently exists * * * unfettered by Federal or State regulation,” 47 U.S.C. § 230(b)(2), however, such a strategy would surely backfire. The reputational damage from self-serving filtering decisions would outweigh the benefits of dissuading a few

¹⁰ This shows how unfounded the Ninth Circuit’s competition concerns are in this market. In the antitrust context, such a competitive market would lead to prompt dismissal of any claim that a company had monopoly power. *See, e.g., Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 481 (1992) (giving examples of “nearly 100%,” “80% to 95%,” “87%,” and “over two-thirds” as examples of market shares that could support a monopolization claim).

customers from trying a competitor’s product. And if a customer does find that her cybersecurity provider is not acting in her interest, she has dozens of alternatives to choose from.

B. The Decision Below Will Undermine Other Tools That Help Internet Users Curate Their Own Online Experience.

The fallout of the Ninth Circuit’s ruling will not be limited to cybersecurity software. Numerous online services—including tools offered by many of the most commonly used Internet products—are protected by Section 230(c)(2)(B)’s immunity. The Ninth Circuit’s decision, if allowed to stand, will invite lawsuits against these companies’ filtering decisions with ginned-up allegations of anticompetitive motives.

For example, Facebook gives users tools to hide or block content posted by others on their personal Facebook page and has successfully invoked Section 230(c)(2)(B) to defend those tools.¹¹ YouTube offers users “Restricted Mode”: “an optional setting that you can use on YouTube to help screen out potentially mature content that you may prefer not to see or don’t want others using your device to see.”¹² Likewise, Twitter offers users a “quality filter” that allows them to “filter[] lower-quality content from [their] notifications,” and it gives users tools to limit

¹¹ *Fehrenbach v. Zeldin*, No. 17-CV-5282 (JFB) (ARL), 2018 WL 4242452, at *5 (E.D.N.Y. Aug. 6, 2018), *report and recommendation adopted*, 2018 WL 4242453 (E.D.N.Y. Sept. 5, 2018).

¹² YouTube Help, *Disable or enable Restricted Mode*, Google, <https://bit.ly/2KftqaQ> (last visited May 11, 2020).

who can send them direct messages and to screen messages with “potentially sensitive” content.¹³ Popular message-board website Reddit’s entire content-moderation program relies on “[v]olunteer community moderators” who use Reddit-provided tools “to remove any post that does not follow their community’s rules, without any involvement or direction from Reddit, Inc.”¹⁴

These are all examples of tools that make the Internet a safer and more pleasant place for consumers. They are just the types of “action taken to enable * * * the technical means to restrict access to material” that Section 230(c)(2)(B) was meant to immunize. 47 U.S.C. § 230(c)(2)(B).

Yet under the Ninth Circuit’s decision, Section 230(c)(2)(B) would no longer provide the kind of absolute immunity Congress intended “to encourage the development of technologies which maximize user control.” *Id.* § 230(b)(3). Rather, plaintiffs whose content is flagged by these tools may write themselves an exception to Section 230(c)(2)(B) by alleging that YouTube or Reddit or Twitter acted with anticompetitive animus towards their content. Indeed, that is exactly what the plaintiff alleged in

¹³ *About the Notifications timeline*, Twitter, <https://bit.ly/3eu7VRv> (last visited May 11, 2020); *About Direct Messages*, Twitter, <https://bit.ly/3bldCQ2> (last visited May 11, 2020).

¹⁴ *Transparency Report 2019*, Reddit, <https://bit.ly/2ysFhj9> (last visited May 11, 2020) (showing that most removals are by user-moderators using Reddit-provided tools).

Prager, supra pp. 19-20, the decision that expressly disagreed with the Ninth Circuit's holding here.

C. The Decision Below Endangers All Of Section 230's Important Immunities.

The logic of the Ninth Circuit's decision also applies naturally to the rest of Section 230(c)'s immunities and will give courts license to imply additional exceptions beyond one for anticompetitive animus. The opinion's reasoning thus invites replacing the "broad immunity" that "Congress enacted," *Zeran*, 129 F.3d at 331, with an unpredictable quasi-immunity riddled with holes derived from judicial policy preferences.

1. Most obviously, any exception read into Section 230(c)(2)(B) would almost certainly apply to Section 230(c)(2)(A). After all, the "material" to which subsection (c)(2)(B) applies merely incorporates subsection (c)(2)(A)'s list by reference. Moreover, because subsection (c)(2)(A) has the "good faith" condition that (c)(2)(B) lacks, *see supra* pp. 14-15, any exception read into (c)(2)(B) would apply even more readily to (c)(2)(A).

But subsection (c)(2)(A) is crucial to what Congress intended when it enacted subsection (c) as a "[p]rotection for 'Good Samaritan' blocking and screening of offensive material." 47 U.S.C. § 230(c). As Judge Easterbook has explained, Section 230(c)(2) accomplishes that goal by working as a "safety net"; a "web host that * * * filter[s] out offensive material is not liable to the censored customer," thereby "induc[ing] web hosts * * * to take more care to protect the privacy and sensibilities of third parties." *Doe v. GTE Corp.*, 347 F.3d 655, 659-660 (7th Cir.

2003). That goal is understandable: An Internet where services like Facebook, YouTube, and Twitter could not screen graphically violent and sexual content for fear of facing massive litigation costs would be a scary place.

Yet the Ninth Circuit’s insertion of atextual exceptions into Section 230(c)(2) will *discourage* moderation and restore the legal regime Congress intended to overturn with Section 230, in which content moderation creates liability. *See supra* p. 23. “Content moderation at scale is impossible to do well” because of the sheer complexity: services like Facebook receive hundreds of millions of uploads every day, requiring imperfect mass-automated moderation supported by thousands of human judgment calls.¹⁵ Predictably, most anyone whose content is restricted will be upset. Under the Ninth Circuit’s reasoning, so long as that person can come up with plausible allegations that the web service restricted the content in order to favor some competing content, the defendant will be unable to successfully invoke Section 230(c)(2) immunity at the motion-to-dismiss stage. Knowing that Section 230(c)(2) will offer only modest protection against litigious content-providers, interactive computer services will have a tremendous

¹⁵ Mike Masnick, *Masnick’s Impossibility Theorem: Content Moderation At Scale Is Impossible To Do Well*, TechDirt (Nov. 20, 2019), <https://bit.ly/2z1XpRh>; see Kate Klonick, *The New Governors: The People, Rules, and Processes Governing Online Speech*, 131 Harv. L. Rev. 1598, 1635-48 (2018) (describing Facebook’s multi-tiered, highly-complex moderation system).

incentive to scale back content moderation—exactly the opposite of the outcome Congress intended.

For example, Facebook’s Community Standards include the platform’s restrictions on hate speech, violent and graphic content, nudity and sexual activity, and sexual solicitation—all under the heading of “*Objectionable Content*.”¹⁶ That is the exact term used in Section 230(c)(2)’s catch-all provision. If courts fashion carve-outs to Section 230(c)(2) immunity for restricting “objectionable” content, purveyors of the most unpleasant software and material could fashion an exception for themselves.

2. The decision below also risks infecting the neighboring immunity in Section 230(c)(1). Whereas subsection (c)(2) immunizes actions to restrict or take down content, subsection (c)(1) immunizes the decision to leave up third-party content. Because the Ninth Circuit’s purposive reasoning was not tethered to any text in (c)(2) and implied an exception from the findings and policy statements that apply to all of Section 230, there is nothing stopping plaintiffs from asking courts to fashion the same exception for (c)(1).

Subsection (c)(1) has been credited by many as having “[c]reated the Internet” as we know it today. *See, e.g.*, Jeff Kosseff, *The Twenty-Six Words That Created the Internet* 4 (2019) (explaining that nine of the ten most popular websites in the United States

¹⁶ *Community Standards: Part III. Objectionable Content*, Facebook, <https://bit.ly/2KgiUAq> (last visited May 11, 2020) (emphasis added).

principally publish third-party content and so rely on Section 230(c)(1)). The vibrant Internet we know will be imperiled when plaintiffs seek to circumvent Section 230(c)(1)'s protections using the approach adopted by the Ninth Circuit below.

3. The fallout from the decision below is also not limited to anticompetitive motivation. Following in its logical footsteps, plaintiffs will ask courts to imply other exceptions based on the broad language in the findings and policy statements of Section 230(a) and (b). Prominent U.S. Senators have already done so, suggesting that subsection (a)(3)'s finding that “[t]he Internet and other interactive computer services offer a forum for a true diversity of political discourse” should be read to imply an immunity exception if a defendant’s content moderation is not viewpoint-neutral.¹⁷

If plaintiffs can persuade judges that an Internet service is not providing “educational and informational resources” or “unique opportunities for cultural development,” 47 U.S.C. § 230(a)(1), (3), or is not “promot[ing] the continued development of the Internet,” *id.* § 230(b)(1), will the defendant lose Section 230 immunity? Such potentially far-reaching

¹⁷ See Press Release, Senator Ted Cruz, *Sen. Cruz: The Pattern of Political Censorship Seen Across Technology Companies is Highly Concerning* (Jan. 17, 2018), <https://bit.ly/2zdfuMB> (Sen. Cruz committee-hearing comment suggesting that “if you are not a neutral public forum,” then “the entire predicate for liability immunity” under Section 230 is not satisfied); Senator Josh Hawley (@HawleyMO), Twitter (Nov. 27, 2018, 1:22 PM), <https://bit.ly/2VB3CLQ> (suggesting same).

arguments will be hard to distinguish from the Ninth Circuit's use of the policy statements to limit the scope of immunity in this case.

III. THIS CASE IS AN IDEAL VEHICLE TO RESOLVE THE QUESTION PRESENTED, AND OTHER OPPORTUNITIES MAY NOT SOON PRESENT THEMSELVES.

1. This case presents an important and purely legal question to the Court without any complicating factual or procedural issues. The Ninth Circuit's ruling that Enigma's complaint should survive dismissal hinges entirely on a straightforward question of statutory interpretation about the scope of Section 230(c)(2)(B)'s immunity. That is an important question that is cleanly presented for this Court to answer.

2. Moreover, this Court may not soon get a better chance to answer the question presented. As the framers of Section 230 recognized, the cost of litigation may itself be enough to force defendants to settle. *See supra* pp. 5-6, 24-29. When facing onerous discovery and legal fees, providers like Malwarebytes may well have to capitulate to plaintiffs' demands not to be marked as threats, making the Internet a more dangerous place for consumers and depriving courts of the ability to provide further guidance on Section 230's immunities. If the Ninth Circuit's atextual exceptions leak into the surrounding provisions of Section 230, *see supra* pp. 31-34, Internet platforms deciding whether to filter offensive content or whether to remove third-party content challenged by a litigious plaintiff will have

similar incentives to settle rather than bear the cost of litigation.

Those dangers are especially heightened because of the Ninth Circuit's outsized role in the technology and Internet sphere. The decision below severely limited the main precedent that scholars have credited with dissuading suits nationwide against companies providing filtering tools.¹⁸ Because so many technology companies are based within the Ninth Circuit, plaintiffs will often have the ability and incentive to bring suit in that circuit, minimizing the chances that another court of appeals or state court will be presented with the same question.

In short, by the time this Court is presented with another opportunity to evaluate whether Section 230 allows judge-made, policy-based exceptions, there is a great danger that filtering-software providers and others who rely on Section 230 will already have modified their business practices in response to the decision below, making the Internet a less safe and vibrant place for consumers.

¹⁸ See Eric Goldman, *The Ten Most Important Section 230 Rulings*, 20 Tulane J. Tech. & Intell. Prop. 1, 6-7 (2017).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

TYLER GRIFFIN NEWBY
FENWICK & WEST LLP
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San Francisco, CA 94104

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Counsel of Record
BENJAMIN A. FIELD
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Counsel for Petitioner

MAY 2020

Grieco, Christopher (ODAG)

From: Grieco, Christopher (ODAG)
Sent: Wednesday, May 27, 2020 12:17 PM
To: Moran, John (OAG)
Cc: Willard, Lauren (OAG); Bissex, Rachel (OAG); Levi, William (OAG); Raman, Sujit (ODAG); Murray, Claire M. (OASG)
Subject: RE: online censorship EO

Agreed. And when we spoke with WH last week we took pains to say it could be seen a (b) (5)

From: Moran, John (OAG) (b) (6) >
Sent: Wednesday, May 27, 2020 12:12 PM
To: Grieco, Christopher (ODAG) (b) (6) >
Cc: Willard, Lauren (OAG) (b) (6) >; Bissex, Rachel (OAG) (b) (6) >; Levi, William (OAG) (b) (6) >; Raman, Sujit (ODAG) (b) (6) >; Murray, Claire M. (OASG) (b) (6) >
Subject: Re: online censorship EO

Defer to you guys, but the concern with that approach is that (b) (5)

John S. Moran
Deputy Chief of Staff & Counselor to the Attorney General
U.S. Department of Justice

(b) (6) (W)

(b) (6) (C)

(b) (6)

On May 27, 2020, at 12:08 PM, Grieco, Christopher (ODAG) (b) (6) > wrote:

Any chance the AG ca (b) (5)

From: Moran, John (OAG) (b) (6) >
Sent: Wednesday, May 27, 2020 12:06 PM
To: Willard, Lauren (OAG) (b) (6) >
Cc: Bissex, Rachel (OAG) (b) (6) >; Levi, William (OAG) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >; Raman, Sujit (ODAG) (b) (6) >; Murray, Claire M. (OASG) (b) (6) >
Subject: Re: online censorship EO

This is going t (b) (5) . It might be better t (b) (5)

John S. Moran
Deputy Chief of Staff & Counselor to the Attorney General
U.S. Department of Justice

(b) (6) (W)
(b) (6) (C)
(b) (6)

On May 27, 2020, at 11:54 AM, Willard, Lauren (OAG) (b) (6) > wrote:

Can we discuss? This has significant impact on our Section 230 proposal that (b) (5) [redacted]. Will want to raise to the AG as well.

From: Whitaker, Henry C. (OLC) (b) (6) >
Sent: Wednesday, May 27, 2020 11:50 AM
To: Willard, Lauren (OAG) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >
Cc: Hart, Rosemary (OLC) (b) (6) >; Wallace, Benjamin (OLC) (b) (6) >
Subject: FW: online censorship EO

Today's emergency du jour is tha (b)(5) per WHCO [redacted], which we just received. Just a heads up (b)(5) per OLC [redacted]

Happy to discuss,

Henry

Henry Whitaker
Deputy Assistant Attorney General
Office of Legal Counsel, U.S. Department of Justice
Office (b) (6)
Cel (b) (6)

From: Philbin, Patrick F. EOP/WHO (b) (6) >
Sent: Wednesday, May 27, 2020 11:01 AM
To: Engel, Steven A. (OLC) (b) (6) >
Cc: Hart, Rosemary (OLC) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >
Subject: online censorship EO

(b)(5) per WHCO [redacted]. I'll call Steve.

Patrick F. Philbin
Deputy Counsel to the President
Office of White House Counsel
(b) (6)
(b) (6) (b) (6)

<EO - Preventing Online Censorship - 5.20.20.docx>

Lee, Steffanie G. (ODAG)

From: Lee, Steffanie G. (ODAG)
Sent: Wednesday, May 27, 2020 2:09 PM
To: Willard, Lauren (OAG); Grieco, Christopher (ODAG)
Cc: Toensing, Brady (OLP)
Subject: RE: Materials for webpage
Attachments: Section 230 Roundtable Bios.pdf; Section 230 Workshop Agenda & Bios.pdf

Here are the bios for the morning and afternoon. If everyone is okay with these pdfs, I can send them to JMD to begin 508 compliance.

Steffanie Lee

(b) (6)

From: Willard, Lauren (OAG) (b) (6) >
Sent: Wednesday, May 27, 2020 11:32 AM
To: Grieco, Christopher (ODAG) (b) (6) >; Lee, Steffanie G. (ODAG) (b) (6) >
Cc: Toensing, Brady (OLP) (b) (6) >
Subject: RE: Materials for webpage

Submissions can be one document, I think. We may need to do some work to combine and add a cover page. I'm running down final permissions for the outstanding couple ones.

Will follow up on thoughts for layout.

Best,
Lauren

From: Grieco, Christopher (ODAG) (b) (6) >
Sent: Wednesday, May 27, 2020 11:10 AM
To: Lee, Steffanie G. (ODAG) (b) (6) >
Cc: Willard, Lauren (OAG) (b) (6) >; Toensing, Brady (OLP) (b) (6) >
Subject: RE: Materials for webpage

From: Lee, Steffanie G. (ODAG) (b) (6) >
Sent: Wednesday, May 27, 2020 11:08 AM
To: Grieco, Christopher (ODAG) (b) (6) >
Subject: Materials for webpage

Gail and Cathy need the following so at least the page is ready to go live tomorrow morning:

- Title for the webpage
- Text on page
- Are you alright with submissions being one giant pdf?

The documents may take a little bit longer because of the 508 compliance but at least this way we can have everything ready to go to link the documents.

Steffanie Lee

Paralegal Specialist

Office of the Deputy Attorney General

U.S. Department of Justice

Offic (b) (6)

Cel (b) (6)

Willard, Lauren (OAG)

From: Willard, Lauren (OAG)
Sent: Wednesday, May 27, 2020 2:44 PM
To: Herlihy, Brianna (PAO); Grieco, Christopher (ODAG)
Subject: RE: Last Day
Attachments: Section 230 Key Takeaways and Recommendations_DRAFT 5.27_CLEAN.docx; Section 230 Redline Proposal (DELIBERATIVE) DRAFT 5.26 v2.DOCX

From: Willard, Lauren (OAG)
Sent: Wednesday, May 27, 2020 2:33 PM
To: Herlihy, Brianna (PAO) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >
Subject: RE: Last Day

Are you still free? I can give you a call and loop in Chris.

From: Herlihy, Brianna (PAO) (b) (6) >
Sent: Wednesday, May 27, 2020 1:01 PM
To: Grieco, Christopher (ODAG) (b) (6) >; Willard, Lauren (OAG) (b) (6) >
Subject: RE: Last Day

No prob! Just have a 2-3pm. Otherwise free.

Brianna Herlihy
Public Affairs Officer
Department of Justice

- c (b) (6)
- o (b) (6)

From: Grieco, Christopher (ODAG) (b) (6) >
Sent: Wednesday, May 27, 2020 1:01 PM
To: Willard, Lauren (OAG) (b) (6) >; Herlihy, Brianna (PAO) (b) (6) >
Subject: RE: Last Day

Brianna, we have to push this. Can we talk later this afternoon? Some timing issues that still need to be discovered.

From: Willard, Lauren (OAG) (b) (6) >
Sent: Wednesday, May 27, 2020 12:57 PM
To: Herlihy, Brianna (PAO) (b) (6) >
Cc: Grieco, Christopher (ODAG) (b) (6) >
Subject: RE: Last Day

I now have a meeting with the AG at 1pm, can we push this to later. Or Chris you can get started without me.

From: Herlihy, Brianna (PAO) (b) (6) >
Sent: Wednesday, May 27, 2020 10:33 AM

To: Willard, Lauren (OAG) (b) (6) >
Cc: Grieco, Christopher (ODAG) (b) (6) >
Subject: Re: Last Day

1 is great. Want to call my cell and you can loop in Chris or do we need a conference line? Dropping Kerri to spare her inbox - I can fill her in after we've talked and get her take.

On May 27, 2020, at 10:11 AM, Willard, Lauren (OAG) (b) (6) > wrote:

Can we do 1pm actually?

From: Grieco, Christopher (ODAG) (b) (6) >
Sent: Wednesday, May 27, 2020 10:11 AM
To: Willard, Lauren (OAG) (b) (6) >; Herlihy, Brianna (PAO) (b) (6) >
Cc: Kupec, Kerri (OPA) (b) (6) >
Subject: RE: Last Day

Same.

From: Willard, Lauren (OAG) (b) (6) >
Sent: Wednesday, May 27, 2020 10:10 AM
To: Herlihy, Brianna (PAO) (b) (6) >
Cc: Kupec, Kerri (OPA) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >
Subject: RE: Last Day

Great! I'm free from 12:30-1:30.

From: Herlihy, Brianna (PAO) (b) (6) >
Sent: Wednesday, May 27, 2020 10:06 AM
To: Willard, Lauren (OAG) (b) (6) >
Cc: Kupec, Kerri (OPA) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >
Subject: Re: Last Day

Hi Lauren - he did brief me; would love to chat. I can do anything after 11:30 today. Let me know what works for you and we can further discuss the below?

Thx
Brianna

On May 27, 2020, at 10:00 AM, Willard, Lauren (OAG) (b) (6) > wrote:

Hi Brianna,

Looking forward to working with you! Did Alexei get you up to speed on our Section 230 efforts and roll-out plan? We are hoping to launch this tomorrow (b) (5) >. Alexei and I spoke about getting a few reporters a scoop and talking on

background (b) (5)

Defer to Kerri though on other ways to make sure we get the right messaging out there when we launch. We had an idea about (b) (5), but I think that makes sense to

(b) (5)

Let me know if you have time to chat later today!

Best,
Lauren

From: Herlihy, Brianna (PAO) (b) (6) >
Sent: Monday, May 25, 2020 8:08 PM
To: Woltornist, Alexei (PAO) (b) (6) >
Cc: Shores, Ryan (ODAG) (b) (6) >; Willard, Lauren (OAG) (b) (6) >
Subject: Re: Last Day

Thanks Alexei! We'll miss you, DHS is lucky to have you.

Looking forward to working with you all!

Brianna

On May 25, 2020, at 3:15 PM, Woltornist, Alexei (PAO)

(b) (6) > wrote:

Connecting you all. Brianna will be taking over the tech/ATR portfolio. I've walked her through things. She's very capable and will take good care of you. Pleasure working with you all. My personal contact info is: (b) (6) (b) (6). Let me know if I can ever be of help. Best of luck!

Alexei Woltornist
Public Affairs Officer
Department of Justice
Cel (b) (6)
Offi (b) (6)

Grieco, Christopher (ODAG)

From: Grieco, Christopher (ODAG)
Sent: Wednesday, May 27, 2020 3:09 PM
To: Shores, Ryan (ODAG); Willard, Lauren (OAG)
Subject: FW: online censorship EO
Attachments: EO - Preventing Online Censorship - 2020.05.27 1300 v2 + OLC (5 27 20).docx

Some of the addition (b) (5) [REDACTED]
[REDACTED].

From: Hart, Rosemary (OLC) (b) (6) [REDACTED] >
Sent: Wednesday, May 27, 2020 2:53 PM
To: Willard, Lauren (OAG) (b) (6) [REDACTED] >; Whitaker, Henry C. (OLC) (b) (6) [REDACTED] >;
Shores, Ryan (ODAG) (b) (6) [REDACTED] >
Cc: Wallace, Benjamin (OLC) (b) (6) [REDACTED] >; Grieco, Christopher (ODAG) (b) (6) [REDACTED] >;
Levi, William (OAG) (b) (6) [REDACTED] >; Wallace, Benjamin (OLC) (b) (6) [REDACTED] >
Subject: RE: online censorship EO

All: Here's what OLC sent WHCO on this, working from an updated version they sent.

Rosemary

*Rosemary Hart
Special Counsel
Office of Legal Counsel
U.S. Department of Justice*

((b) (6) [REDACTED]
(cel (b) (6) [REDACTED])

From: Willard, Lauren (OAG) (b) (6) [REDACTED] >
Sent: Wednesday, May 27, 2020 12:21 PM
To: Whitaker, Henry C. (OLC) (b) (6) [REDACTED] >; Shores, Ryan (ODAG) (b) (6) [REDACTED] >
Cc: Hart, Rosemary (OLC) (b) (6) [REDACTED] >; Wallace, Benjamin (OLC) (b) (6) [REDACTED] >; Grieco,
Christopher (ODAG) (b) (6) [REDACTED] >; Levi, William (OAG) (b) (6) [REDACTED] >
Subject: RE: online censorship EO

Addign Chris and Will. Will wanted ODAG to work on this first before teeing up to AG.

From: Whitaker, Henry C. (OLC) (b) (6) [REDACTED] >
Sent: Wednesday, May 27, 2020 12:21 PM
To: Shores, Ryan (ODAG) (b) (6) [REDACTED] >; Willard, Lauren (OAG) (b) (6) [REDACTED] >
Cc: Hart, Rosemary (OLC) (b) (6) [REDACTED] >; Wallace, Benjamin (OLC) (b) (6) [REDACTED] >
Subject: RE: online censorship EO

I would ask that you and Lauren try to handle that end (b)(5) per OLC [REDACTED]
[REDACTED]

From: Shores, Ryan (ODAG) (b) (6) >

Sent: Wednesday, May 27, 2020 12:06 PM

To: Willard, Lauren (OAG) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >

Cc: Hart, Rosemary (OLC) (b) (6) >; Wallace, Benjamin (OLC) (b) (6) >

Subject: RE: online censorship EO

[Any possibility t \(b\) \(5\) ? Obviously a lot of issues here ...](#)

From: Willard, Lauren (OAG) (b) (6) >

Sent: Wednesday, May 27, 2020 11:51 AM

To: Whitaker, Henry C. (OLC) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >

Cc: Hart, Rosemary (OLC) (b) (6) >; Wallace, Benjamin (OLC) (b) (6) >

Subject: RE: online censorship EO

There ar (b) (5) here. Thanks for flagging, I'll need to raise to the AG.

From: Whitaker, Henry C. (OLC) (b) (6) >

Sent: Wednesday, May 27, 2020 11:50 AM

To: Willard, Lauren (OAG) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >

Cc: Hart, Rosemary (OLC) (b) (6) >; Wallace, Benjamin (OLC) (b) (6) >

Subject: FW: online censorship EO

Duplicative Information - See Document ID 0.7.2270.5166

Morrell, David M. (CIV)

From: Morrell, David M. (CIV)
Sent: Wednesday, May 27, 2020 3:58 PM
To: Willard, Lauren (OAG); Pandya, Brian (OASG)
Subject: FW: IMPORTANT: Rush EO on online censorship
Attachments: EO - Preventing Online Censorship - 2020.05.27 1300 v2 + OLC (5 27 20).docx
Importance: High

Not sure if this hit your rada (b)(5) per CIV [REDACTED].

From: Hart, Rosemary (OLC) (b) (6) >
Sent: Wednesday, May 27, 2020 3:47 PM
To: Wall, Jeffrey B. (OSG) (b) (6) >; Perkins, Paul R. (CIV) (b) (6) >; Mooppan, Hashim (CIV) (b) (6) >; Morrell, David M. (CIV) (b) (6) >
Cc: Whitaker, Henry C. (OLC) (b) (6) >; Wallace, Benjamin (OLC) (b) (6) >
Subject: IMPORTANT: Rush EO on online censorship
Importance: High

All: We are working on a rush EO dealing with online censorship. We'd appreciate your quick review and reactions on thi (b)(5) per OLC [REDACTED]. Specific edits to address any issues would be appreciated.

This may be signed as early as today, so we need any input within the next hour if possible.

Thanks, and sorry for the rush, but this is on a very fast track.

Rosemary

*Rosemary Hart
Special Counsel
Office of Legal Counsel
U.S. Department of Justice
(o (b) (6)
(cel (b) (6)*

Moran, John (OAG)

From: Moran, John (OAG)
Sent: Wednesday, May 27, 2020 5:08 PM
To: Willard, Lauren (OAG)
Cc: Levi, William (OAG); Bissex, Rachel (OAG)
Subject: Fwd: FLASH/CLOSE HOLD REVIEW: Preventing Online Censorship
Attachments: EO - Preventing Online Censorship - 2020.05.27 1300 v2 + OLC (5 27 20) + WHCO5 CLEAN.docx; ATT00001.htm

Lauren,

Here is the formal request for review by **7 PM Tonight**. My thought is tha (b) (5)

[REDACTED]

[REDACTED]

[REDACTED].

John

John S. Moran
Deputy Chief of Staff & Counselor to the Attorney General
U.S. Department of Justice

(b) (6) (W)
(b) (6) (C)
(b) (6)

Begin forwarded message:

From: Staff Secretary (b) (6) >
Date: May 27, 2020 at 4:49:32 PM EDT
To: "Meadows, Mark R. EOP/WHO" (b) (6) >, "Gilmartin, Kayleigh M. EOP/WHO" (b) (6) >, "Farah, Alyssa A. EOP/WHO" (b) (6) >, "Hicks, Hope C. EOP/WHO" (b) (6) >, "Scavino, Dan J. EOP/WHO" (b) (6) >, "Kushner, Jared C. EOP/WHO" (b) (6) >, "Kudlow, Larry A. EOP/WHO" (b) (6) >, "Miller, Stephen EOP/WHO" (b) (6) >, "Philbin, Patrick F. EOP/WHO" (b) (6) >, "Eisenberg, John A. EOP/WHO" (b) (6) >, "Pottinger, Matthew F. EOP/WHO" (b) (6) >, "Rinat, Ory S. EOP/WHO" (b) (6) >, "Rollins, Brooke L. EOP/WHO" (b) (6) >, "Kratsios, Michael J. EOP/OSTP" (b) (6) >, "Liddell, Christopher P. EOP/WHO" (b) (6) >, "Droegemeier, Kelvin K. EOP/OSTP" (b) (6) >, "Vought, Russell T. EOP/OMB" (b) (6) >, "Walsh, Michael (Federal)" <MWalsh@doc.gov>, "Blair, Robert (Federal)" <RBlair@doc.gov>, "Levi, William (OAG)" (b) (6) >, "Moran, John (OAG)" (b) (6) >, White House Clearances <WhiteHouseClearances@state.gov>

Cc: Staff Secretary (b) (6) >

Subject: FLASH/CLOSE HOLD REVIEW: Preventing Online Censorship

All,

Attached is a draft EO entitled "Preventing Online Censorship." Affirmative clearance is requested (b)(5) per WHCO (b)(5) per WHCO. All others welcome to comment as well. Please send all comments and clearances to Staff Secretary by **7pm tonight**.

Thank you,
Staff Secretary

Willard, Lauren (OAG)

From: Willard, Lauren (OAG)
Sent: Wednesday, May 27, 2020 5:10 PM
To: Moran, John (OAG)
Cc: Levi, William (OAG); Bissex, Rachel (OAG)
Subject: RE: FLASH/CLOSE HOLD REVIEW: Preventing Online Censorship

Thanks John! Just hopped off a call with OLC and ODAG to walk through a few targeted edits. Welcome thoughts from this group on other edits or broader strategy.

Also welcome thoughts on how this plays into our goal o (b) (5) but touches on some overlapping issues.

Best,
Lauren

From: Moran, John (OAG) (b) (6) >
Sent: Wednesday, May 27, 2020 5:08 PM
To: Willard, Lauren (OAG) (b) (6) >
Cc: Levi, William (OAG) (b) (6) >; Bissex, Rachel (OAG) (b) (6) >
Subject: Fwd: FLASH/CLOSE HOLD REVIEW: Preventing Online Censorship

Duplicative Information - See Document ID 0.7.2270.5105

Willard, Lauren (OAG)

From: Willard, Lauren (OAG)
Sent: Wednesday, May 27, 2020 5:47 PM
To: Moran, John (OAG)
Cc: Levi, William (OAG); Bissex, Rachel (OAG)
Subject: RE: FLASH/CLOSE HOLD REVIEW: Preventing Online Censorship

Thanks John! Happy for you to handle the response, and I think a short note like this is a good one. Let me spend a couple minutes reviewing to see if there is anything else we would say.

From: Moran, John (OAG) (b) (6) >
Sent: Wednesday, May 27, 2020 5:45 PM
To: Willard, Lauren (OAG) (b) (6) >
Cc: Levi, William (OAG) (b) (6) >; Bissex, Rachel (OAG) (b) (6) >
Subject: RE: FLASH/CLOSE HOLD REVIEW: Preventing Online Censorship

Here is what I am thinking for our passback (along with whatever edits we want to include in a redline):

(b) (5)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Happy to take any edits or to let any of you handle the response, if you wish. But otherwise, I can plan to send this as soon as we have a r

John

From: Willard, Lauren (OAG) (b) (6) >
Sent: Wednesday, May 27, 2020 5:10 PM
To: Moran, John (OAG) (b) (6) >
Cc: Levi, William (OAG) (b) (6) >; Bissex, Rachel (OAG) (b) (6) >
Subject: RE: FLASH/CLOSE HOLD REVIEW: Preventing Online Censorship

Duplicative Information - See Document ID 0.7.2270.5109

Moran, John (OAG)

From: Moran, John (OAG)
Sent: Wednesday, May 27, 2020 6:01 PM
To: Willard, Lauren (OAG)
Cc: Levi, William (OAG); Bissex, Rachel (OAG)
Subject: RE: FLASH/CLOSE HOLD REVIEW: Preventing Online Censorship

Lauren,

Staff Sec just called for any critical edits ASAP. I am inclined just to send my note and say tha (b) (5) [REDACTED]. But if you think we can have something super quick, let me know.

John

From: Willard, Lauren (OAG) (b) (6) [REDACTED] >
Sent: Wednesday, May 27, 2020 5:47 PM
To: Moran, John (OAG) (b) (6) [REDACTED] >
Cc: Levi, William (OAG) (b) (6) [REDACTED]; Bissex, Rachel (OAG) (b) (6) [REDACTED] >
Subject: RE: FLASH/CLOSE HOLD REVIEW: Preventing Online Censorship

Duplicative Information - See Document ID 0.7.2270.5079

Willard, Lauren (OAG)

From: Willard, Lauren (OAG)
Sent: Wednesday, May 27, 2020 6:03 PM
To: Moran, John (OAG)
Cc: Levi, William (OAG); Bissex, Rachel (OAG)
Subject: RE: FLASH/CLOSE HOLD REVIEW: Preventing Online Censorship

Still reviewing but a few tweaks so far.

From: Moran, John (OAG) (b) (6) >
Sent: Wednesday, May 27, 2020 5:45 PM
To: Willard, Lauren (OAG) (b) (6) >
Cc: Levi, William (OAG) (b) (6) >; Bissex, Rachel (OAG) (b) (6) >
Subject: RE: FLASH/CLOSE HOLD REVIEW: Preventing Online Censorship

Here is what I am thinking for our passback (along with whatever edits we want to include in a redline):

(b) (5)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Happy to take any edits or to let any of you handle the response, if you wish. But otherwise, I can plan to send this as soon as we have a r

John

From: Willard, Lauren (OAG) (b) (6) >
Sent: Wednesday, May 27, 2020 5:10 PM
To: Moran, John (OAG) (b) (6) >
Cc: Levi, William (OAG) (b) (6) >; Bissex, Rachel (OAG) (b) (6) >
Subject: RE: FLASH/CLOSE HOLD REVIEW: Preventing Online Censorship

Duplicative Information - See Document ID 0.7.2270.5079

Willard, Lauren (OAG)

From: Willard, Lauren (OAG)
Sent: Wednesday, May 27, 2020 6:04 PM
To: Moran, John (OAG)
Cc: Levi, William (OAG); Bissex, Rachel (OAG)
Subject: RE: FLASH/CLOSE HOLD REVIEW: Preventing Online Censorship

Can you give me a call?

From: Moran, John (OAG) (b) (6) >
Sent: Wednesday, May 27, 2020 6:03 PM
To: Willard, Lauren (OAG) (b) (6) >
Cc: Levi, William (OAG) (b) (6) >; Bissex, Rachel (OAG) (b) (6) >
Subject: RE: FLASH/CLOSE HOLD REVIEW: Preventing Online Censorship

OK—we will need to pare this down to critical edits and send it off ASAP.

John

From: Willard, Lauren (OAG) (b) (6) >
Sent: Wednesday, May 27, 2020 6:03 PM
To: Moran, John (OAG) (b) (6) >
Cc: Levi, William (OAG) (b) (6) >; Bissex, Rachel (OAG) (b) (6) >
Subject: RE: FLASH/CLOSE HOLD REVIEW: Preventing Online Censorship

Duplicative Information - See Document ID 0.7.2270.5214

Moran, John (OAG)

From: Moran, John (OAG)
Sent: Wednesday, May 27, 2020 6:10 PM
To: Staff Secretary
Cc: Levi, William (OAG); Bissex, Rachel (OAG); Willard, Lauren (OAG)
Subject: RE: FLASH/CLOSE HOLD REVIEW: Preventing Online Censorship

Staff Sec:

Thanks for the opportunity to review (b)(5) per WHCO [REDACTED]
[REDACTED]

(b)(5) per WHCO [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Given the timing, we don't have any critical policy edits to offer.

Regards,

John

From: Staff Secretary (b) (6) >
Sent: Wednesday, May 27, 2020 5:55 PM
To: Staff Secretary (b) (6) >; Meadows, Mark R. EOP/WHO (b) (6) >; Gilmartin, Kayleigh M. EOP/WHO (b) (6) >; Farah, Alyssa A. EOP/WHO (b) (6) >; Hicks, Hope C. EOP/WHO (b) (6) >; Conway, Kellyanne E. EOP/WHO (b) (6) >; Scavino, Dan J. EOP/WHO (b) (6) >; Kushner, Jared C. EOP/WHO (b) (6) >; Kudlow, Larry A. EOP/WHO (b) (6) >; Miller, Stephen EOP/WHO (b) (6) >; Philbin, Patrick F. EOP/WHO (b) (6) (b) (6) >; Eisenberg, John A. EOP/WHO (b) (6) >; Pottinger, Matthew F. EOP/WHO (b) (6) >; Rinat, Ory S. EOP/WHO (b) (6) >; Rollins, Brooke L. EOP/WHO (b) (6) >; Kratsios, Michael J. EOP/OSTP (b) (6) >; Liddell, Christopher P. EOP/WHO (b) (6) >; Droegemeier, Kelvin K. EOP/OSTP (b) (6) >; Vought, Russell T. EOP/OMB (b) (6) >; Walsh, Michael (Federal) <MWalsh@doc.gov>; Blair, Robert (Federal) <RBlair@doc.gov>; Levi, William (OAG) (b) (6) >; Moran, John (OAG) (b) (6) >; White House Clearances <WhiteHouseClearances@state.gov>
Subject: RE: FLASH/CLOSE HOLD REVIEW: Preventing Online Censorship
Importance: High

We will need any critical edits ASAP.

From: Staff Secretary

Sent: Wednesday, May 27, 2020 4:48 PM

To: Meadows, Mark R. EOP/WHO (b) (6) >; Gilmartin, Kayleigh M. EOP/WHO (b) (6) >; Farah, Alyssa A. EOP/WHO (b) (6) >; Hicks, Hope C. EOP/WHO (b) (6) >; Scavino, Dan J. EOP/WHO (b) (6) >; Kushner, Jared C. EOP/WHO (b) (6) >; Kudlow, Larry A. EOP/WHO (b) (6) >; Miller, Stephen EOP/WHO (b) (6) >; Philbin, Patrick F. EOP/WHO (b) (6) >; Eisenberg, John A. EOP/WHO (b) (6) >; Pottinger, Matthew F. EOP/WHO (b) (6) >; Rinat, Ory S. EOP/WHO (b) (6) >; Rollins, Brooke L. EOP/WHO (b) (6) >; Kratsios, Michael J. EOP/OSTP (b) (6) >; Liddell, Christopher P. EOP/WHO (b) (6) >; Droegemeier, Kelvin K. EOP/OSTP (b) (6) >; Vought, Russell T. EOP/OMB (b) (6) >; 'Walsh, Michael (Federal)' <MWalsh@doc.gov>; 'Blair, Robert (Federal)' <RBlair@doc.gov>; 'Levi, William (OAG)' (b) (6) >; 'Moran, John (OAG)' (b) (6) >; 'White House Clearances' <WhiteHouseClearances@state.gov>

Cc: Staff Secretary (b) (6) >

Subject: FLASH/CLOSE HOLD REVIEW: Preventing Online Censorship

Importance: High

All,

Attached is a draft EO entitled "Preventing Online Censorship." Affirmative clearance is requested (b)(5) per WHCO (b)(5) per WHCO. All others welcome to comment as well. Please send all comments and clearances to Staff Secretary by **7pm tonight**.

Thank you,
Staff Secretary

Levi, William (OAG)

From: Levi, William (OAG)
Sent: Wednesday, May 27, 2020 6:20 PM
To: Moran, John (OAG)
Cc: Grieco, Christopher (ODAG); Willard, Lauren (OAG); Bissex, Rachel (OAG); Raman, Sujit (ODAG); Murray, Claire M. (OASG)
Subject: Re: online censorship EO

Please hold the 230 proposal from going to OMB until the EO is out, whether that is tonight or tomorrow.
Thanks!

On May 27, 2020, at 12:11 PM, Moran, John (OAG) (b) (6) > wrote:

Duplicative Information - See Document ID 0.7.2270.5166

Willard, Lauren (OAG)

From: Willard, Lauren (OAG)
Sent: Wednesday, May 27, 2020 8:00 PM
To: Murray, Claire M. (OASG)
Subject: FW: online censorship EO
Attachments: EO - Preventing Online Censorship - 2020.05.27 1300 v2 + OLC (5 27 20) + WHCO5 CLEAN.docx

[FYI. For background.](#)

From: Willard, Lauren (OAG)
Sent: Wednesday, May 27, 2020 6:09 PM
To: Moran, John (OAG) (b) (6) >
Subject: FW: online censorship EO

[FYI – what I sent to OL \(b\) \(5\)](#).

From: Willard, Lauren (OAG)
Sent: Wednesday, May 27, 2020 6:08 PM
To: Grieco, Christopher (ODAG) (b) (6) >; Hart, Rosemary (OLC) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >
Cc: Whitaker, Henry C. (OLC) (b) (6) >; Wallace, Benjamin (OLC) (b) (6) >
Subject: RE: online censorship EO

[It sounds like this is moving extremely quickly, haven't had a chance to redline, but will reemphasize my point that it is](#)

(b) (5)
[Redacted text block]

From: Grieco, Christopher (ODAG) (b) (6) >
Sent: Wednesday, May 27, 2020 5:47 PM
To: Hart, Rosemary (OLC) (b) (6) >; Willard, Lauren (OAG) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >
Cc: Whitaker, Henry C. (OLC) (b) (6) >; Wallace, Benjamin (OLC) (b) (6) >
Subject: RE: online censorship EO

[Some more edits to that section](#)

From: Grieco, Christopher (ODAG)
Sent: Wednesday, May 27, 2020 5:38 PM
To: Hart, Rosemary (OLC) (b) (6) >; Willard, Lauren (OAG) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >
Cc: Whitaker, Henry C. (OLC) (b) (6) >; Wallace, Benjamin (OLC) (b) (6) >

Subject: RE: online censorship EO

This is my initial take on that section but there are certainly other edits we could suggest and I am sure Ryan and Lauren may have others.

From: Hart, Rosemary (OLC) (b) (6) >
Sent: Wednesday, May 27, 2020 5:32 PM
To: Willard, Lauren (OAG) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >
Cc: Whitaker, Henry C. (OLC) (b) (6) >; Wallace, Benjamin (OLC) (b) (6) >
Subject: RE: online censorship EO

Thanks for flagging. If you have specific edits, that would be great.

Rosemary Hart
Special Counsel
Office of Legal Counsel
U.S. Department of Justice
(o (b) (6)
(cel (b) (6)

From: Willard, Lauren (OAG) (b) (6) >
Sent: Wednesday, May 27, 2020 5:26 PM
To: Hart, Rosemary (OLC) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >
Cc: Whitaker, Henry C. (OLC) (b) (6) >; Wallace, Benjamin (OLC) (b) (6) >
Subject: RE: online censorship EO

Chris, Ryan, and I will try to come up with some targeted redlines if that would be helpful, but wanted to go ahead and flag this issue.

From: Willard, Lauren (OAG)
Sent: Wednesday, May 27, 2020 5:24 PM
To: Hart, Rosemary (OLC) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >
Cc: Whitaker, Henry C. (OLC) (b) (6) >; Wallace, Benjamin (OLC) (b) (6) >
Subject: RE: online censorship EO

Thanks! We will have comments on the new language on page 3.

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5)

Our legislative proposal would (b) (5)

. But that's different than (b) (5)

Best,
Lauren

From: Hart, Rosemary (OLC) (b) (6) >

Sent: Wednesday, May 27, 2020 5:04 PM

To: Willard, Lauren (OAG) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >

Cc: Whitaker, Henry C. (OLC) (b) (6) >; Wallace, Benjamin (OLC) (b) (6) >

Subject: FW: online censorship EO

New draft.

Rosemary Hart
Special Counsel
Office of Legal Counsel
U.S. Department of Justice
((b) (6))
(cel (b) (6))

(b)(5) per OLC

(b)(5) per OLC

Hart, Rosemary (OLC)

From: Hart, Rosemary (OLC)
Sent: Thursday, May 28, 2020 7:21 AM
To: Willard, Lauren (OAG); Whitaker, Henry C. (OLC); Wallace, Benjamin (OLC)
Cc: Shores, Ryan (ODAG); Grieco, Christopher (ODAG)
Subject: RE: online censorship EO
Attachments: 2020PreventingOnlineCensorship.eo2 + PFP Policy version SMD + ODS.docx

We got a passback from the WH late last night, which I have attached. There is a fair amount of new language.

Rosemary Hart
Special Counsel
Office of Legal Counsel
U.S. Department of Justice

((b) (6))
(cel (b) (6))

From: Willard, Lauren (OAG) (b) (6) >
Sent: Thursday, May 28, 2020 7:17 AM
To: Hart, Rosemary (OLC) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >; Wallace, Benjamin (OLC) (b) (6) >
Cc: Shores, Ryan (ODAG) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >
Subject: Re: online censorship EO

Good morning all. Hopefully folks got a little sleep after yesterday's fire drill!

Could someone send me whatever the current draft of the EO is before 9:45 this morning? I have meeting with AG and wanted to have the latest.

Many thanks!
Lauren

Sent from my iPhone

On May 27, 2020, at 6:41 PM, Hart, Rosemary (OLC) (b) (6) > wrote:

She just retracted that.

Rosemary Hart
Special Counsel
Office of Legal Counsel
U.S. Department of Justice

(o (b) (6))
(cel (b) (6))

From: Grieco, Christopher (ODAG) (b) (6) >
Sent: Wednesday, May 27, 2020 6:33 PM
To: Shores, Ryan (ODAG) (b) (6) >

Cc: Willard, Lauren (OAG) (b) (6) >; Hart, Rosemary (OLC) (b) (6) >;
Whitaker, Henry C. (OLC) (b) (6) >; Wallace, Benjamin (OLC)
(b) (6) >

Subject: Re: online censorship EO

Press sec just said an EO on censorship is coming out today

On May 27, 2020, at 6:13 PM, Shores, Ryan (ODAG) (b) (6) > wrote:

I just got off another call and won't be able to look closely until later, but definitely agree with the points below.

On May 27, 2020, at 6:08 PM, Willard, Lauren (OAG)
(b) (6) > wrote:

Duplicative Information - See Document ID 0.7.2270.6654



Willard, Lauren (OAG)

From: Willard, Lauren (OAG)
Sent: Thursday, May 28, 2020 7:38 AM
To: Murray, Claire M. (OASG); Pandya, Brian (OASG)
Subject: Fwd: online censorship EO
Attachments: 2020PreventingOnlineCensorship.eo2 + PFP Policy version SMD + ODS.docx; ATT00001.htm

FYI. Please keep close hold. I'm going to try to get OLC to fla (b) (5)

Brian let me know if you have edits, I can loop into mine.

Sent from my iPhone

Begin forwarded message:

From: "Hart, Rosemary (OLC)" (b) (6) >
Date: May 28, 2020 at 7:20:41 AM EDT
To: "Willard, Lauren (OAG)" (b) (6) >, "Whitaker, Henry C. (OLC)" (b) (6) >, "Wallace, Benjamin (OLC)" (b) (6) >
Cc: "Shores, Ryan (ODAG)" (b) (6) >, "Grieco, Christopher (ODAG)" (b) (6) >
Subject: RE: online censorship EO

Duplicative Information - See Document ID 0.7.2270.6306

Willard, Lauren (OAG)

From: Willard, Lauren (OAG)
Sent: Thursday, May 28, 2020 9:24 AM
To: Whitaker, Henry C. (OLC); Wallace, Benjamin (OLC); Hart, Rosemary (OLC)
Cc: Shores, Ryan (ODAG); Grieco, Christopher (ODAG)
Subject: RE: online censorship EO
Attachments: 2020PreventingOnlineCensorship.eo2 + PFP Policy version SMD + ODS +OAG.docx

OLC

Here are some edits in the attached on the Section 230 interpretation.

Best,
Lauren

From: Willard, Lauren (OAG)
Sent: Thursday, May 28, 2020 9:16 AM
To: Whitaker, Henry C. (OLC) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >;
Wallace, Benjamin (OLC) (b) (6) >; Hart, Rosemary (OLC) (b) (6) >
Cc: Shores, Ryan (ODAG) (b) (6) >
Subject: RE: online censorship EO

Agree (b) (5) . Hopefully we ca (b) (5)

From: Whitaker, Henry C. (OLC) (b) (6) >
Sent: Thursday, May 28, 2020 9:14 AM
To: Willard, Lauren (OAG) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >; Wallace,
Benjamin (OLC) (b) (6) >; Hart, Rosemary (OLC) (b) (6) >
Cc: Shores, Ryan (ODAG) (b) (6) >
Subject: RE: online censorship EO

That's not what they think. They are trying to say tha (b) (5)

From: Willard, Lauren (OAG) (b) (6) >
Sent: Thursday, May 28, 2020 9:09 AM
To: Whitaker, Henry C. (OLC) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >;
Wallace, Benjamin (OLC) (b) (6) >; Hart, Rosemary (OLC) (b) (6) >
Cc: Shores, Ryan (ODAG) (b) (6) >
Subject: RE: online censorship EO

I think the point is tha (b) (5)

Legislatively, we could say th (b) (5)

From: Whitaker, Henry C. (OLC) (b) (6) >
Sent: Thursday, May 28, 2020 9:06 AM
To: Willard, Lauren (OAG) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >; Wallace, Benjamin (OLC) (b) (6) >; Hart, Rosemary (OLC) (b) (6) >
Cc: Shores, Ryan (ODAG) (b) (6) >
Subject: RE: online censorship EO

I am currently going through the draft. I think th (b) (5)

[REDACTED]

From: Willard, Lauren (OAG) (b) (6) >
Sent: Thursday, May 28, 2020 9:04 AM
To: Whitaker, Henry C. (OLC) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >; Wallace, Benjamin (OLC) (b) (6) >; Hart, Rosemary (OLC) (b) (6) >
Cc: Shores, Ryan (ODAG) (b) (6) >
Subject: RE: online censorship EO

Hi all, working on some specific edits now, will hope to share in next 20 minutes. OLC folks, let us know if it would be helpful to hop on a call this morning. I'd like to make your jobs easier not harder!

From: Whitaker, Henry C. (OLC) (b) (6) >
Sent: Thursday, May 28, 2020 9:01 AM
To: Grieco, Christopher (ODAG) (b) (6) >; Wallace, Benjamin (OLC) (b) (6) >; Hart, Rosemary (OLC) (b) (6) >; Willard, Lauren (OAG) (b) (6) >
Cc: Shores, Ryan (ODAG) (b) (6) >
Subject: RE: online censorship EO

(b)(5) per OLC

[REDACTED]

From: Grieco, Christopher (ODAG) (b) (6) >
Sent: Thursday, May 28, 2020 9:00 AM
To: Wallace, Benjamin (OLC) (b) (6) >; Hart, Rosemary (OLC) (b) (6) >; Willard, Lauren (OAG) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >
Cc: Shores, Ryan (ODAG) (b) (6) >
Subject: RE: online censorship EO

That makes sense. I would strongly favo (b) (5)

[REDACTED]

From: Wallace, Benjamin (OLC) (b) (6) >
Sent: Thursday, May 28, 2020 8:57 AM
To: Hart, Rosemary (OLC) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >; Willard, Lauren (OAG) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >
Cc: Shores, Ryan (ODAG) (b) (6) >
Subject: RE: online censorship EO

(b)(5) per OLC

[REDACTED]

From: Hart, Rosemary (OLC) (b) (6) >
Sent: Thursday, May 28, 2020 8:46 AM
To: Grieco, Christopher (ODAG) (b) (6) >; Willard, Lauren (OAG) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >; Wallace, Benjamin (OLC) (b) (6) >
Cc: Shores, Ryan (ODAG) (b) (6) >
Subject: RE: online censorship EO

(b)(5) per OLC [REDACTED]

Rosemary Hart
Special Counsel
Office of Legal Counsel
U.S. Department of Justice
(o (b) (6) [REDACTED])
(cel (b) (6) [REDACTED])

From: Grieco, Christopher (ODAG) (b) (6) >
Sent: Thursday, May 28, 2020 8:32 AM
To: Hart, Rosemary (OLC) (b) (6) >; Willard, Lauren (OAG) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >; Wallace, Benjamin (OLC) (b) (6) >
Cc: Shores, Ryan (ODAG) (b) (6) >
Subject: RE: online censorship EO

(b)(5) per OLC [REDACTED]

From: Hart, Rosemary (OLC) (b) (6) >
Sent: Thursday, May 28, 2020 7:21 AM
To: Willard, Lauren (OAG) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >; Wallace, Benjamin (OLC) (b) (6) >
Cc: Shores, Ryan (ODAG) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >
Subject: RE: online censorship EO

Duplicative Information - See Document ID 0.7.2270.6306

Willard, Lauren (OAG)

From: Willard, Lauren (OAG)
Sent: Thursday, May 28, 2020 1:23 PM
To: Whitaker, Henry C. (OLC); Hart, Rosemary (OLC)
Cc: Moran, John (OAG); Levi, William (OAG)
Subject: FW: Do you know what the deal is with is?

I'll review the new EO asap. On the last draf (b) (5)

From: Willard, Lauren (OAG)
Sent: Thursday, May 28, 2020 1:21 PM
To: Levi, William (OAG) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >
Cc: Watson, Theresa (OAG) (b) (6) >; Engel, Steven A. (OLC) (b) (6) >; Moran, John (OAG) (b) (6) >
Subject: RE: Do you know what the deal is with is?

Adding John, and copying below the relevant DOJ/AG provisions in latest draft:

Will – let me know if you want us to discuss with AG.

(b) (5)

(b) (5)

From: Willard, Lauren (OAG)
Sent: Thursday, May 28, 2020 1:19 PM

To: Levi, William (OAG) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >
Cc: Watson, Theresa (OAG) (b) (6) >; Engel, Steven A. (OLC) (b) (6) >
Subject: RE: Do you know what the deal is with is?

All,

Here's the draft TPs that went to the AG to revise for today.

OLC – is there anything else in the final EO we should flag for the AG? (b) (5)

Will – it may be wort (b) (5)

Best,

Lauren

From: Levi, William (OAG) (b) (6) >
Sent: Thursday, May 28, 2020 1:07 PM
To: Whitaker, Henry C. (OLC) (b) (6) >
Cc: Willard, Lauren (OAG) (b) (6) >; Watson, Theresa (OAG) (b) (6) >; Engel, Steven A. (OLC) (b) (6) >
Subject: Re: Do you know what the deal is with is?

T can you print for AG? And team, please circulate the TPs to this chain when ready.

On May 28, 2020, at 12:53 PM, Whitaker, Henry C. (OLC) (b) (6) > wrote:

Here's the latest. This will be signed before 2 pm.

From: Levi, William (OAG) (b) (6) >
Sent: Thursday, May 28, 2020 11:48 AM
To: Willard, Lauren (OAG) (b) (6) >
Cc: Moran, John (OAG) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >
Subject: Re: Do you know what the deal is with is?

Agree with what John says below.

On May 28, 2020, at 11:42 AM, Willard, Lauren (OAG) (b) (6) > wrote:

Adding Will.

Will/John – views on whether we should ma (b) (5) to the provisions Henry flagged below? I've been focused primarily on th (b) (5), but we should als (b) (5).

Henry – when appropriate, do you mind circulating the most recent draft of the EO to this group?

Best,

Lauren

From: Moran, John (OAG) (b) (6) >
Sent: Thursday, May 28, 2020 11:32 AM
To: Whitaker, Henry C. (OLC) (b) (6) >
Cc: Willard, Lauren (OAG) (b) (6) >
Subject: Re: Do you know what the deal is with is?

I am certainly not opposed t (b) (5).

John S. Moran

Deputy Chief of Staff & Counselor to the Attorney General

U.S. Department of Justice

(b) (6) (W)

(b) (6) (C)

(b) (6)

On May 28, 2020, at 11:08 AM, Whitaker, Henry C. (OLC) (b) (6) > wrote:

Ok. In the latest round, the working group is also t (b) (5), including:

(b) (5) ;

From: Willard, Lauren (OAG) (b) (6) >
Sent: Thursday, May 28, 2020 11:05 AM
To: Whitaker, Henry C. (OLC) (b) (6) >; Moran, John (OAG) (b) (6) >
Subject: RE: Do you know what the deal is with is?

Adding John. I thin (b) (5) [redacted]. On a call, but can connect after.

From: Whitaker, Henry C. (OLC) (b) (6) >
Sent: Thursday, May 28, 2020 11:04 AM
To: Willard, Lauren (OAG) (b) (6) >
Subject: RE: Do you know what the deal is with is?

If OAG has (b) (5), it would be useful to know. (b) (6)
(b) (5) [redacted]

From: Willard, Lauren (OAG) (b) (6) >
Sent: Thursday, May 28, 2020 11:02 AM
To: Whitaker, Henry C. (OLC) (b) (6) >
Subject: RE: Do you know what the deal is with is?

Not really, I think this is (b) (5) [redacted].

From: Whitaker, Henry C. (OLC) (b) (6) >
Sent: Thursday, May 28, 2020 10:57 AM
To: Willard, Lauren (OAG) (b) (6) >
Subject: Do you know what the deal is with is?

(b) (5) [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

<Censorship 5.28 1115AM CLEAN + OLC.docx>

Whitaker, Henry C. (OLC)

From: Whitaker, Henry C. (OLC)
Sent: Thursday, May 28, 2020 1:26 PM
To: Willard, Lauren (OAG); Hart, Rosemary (OLC)
Cc: Moran, John (OAG); Levi, William (OAG)
Subject: RE: Do you know what the deal is with is?

It's a good flag. We hav (b) (5). We'll flag it again.

From: Willard, Lauren (OAG) (b) (6) >
Sent: Thursday, May 28, 2020 1:23 PM
To: Whitaker, Henry C. (OLC) (b) (6) >; Hart, Rosemary (OLC) (b) (6) >
Cc: Moran, John (OAG) (b) (6) >; Levi, William (OAG) (b) (6) >
Subject: FW: Do you know what the deal is with is?

Duplicative Information - See Document ID 0.7.2270.5108

Willard, Lauren (OAG)

From: Willard, Lauren (OAG)
Sent: Thursday, May 28, 2020 1:26 PM
To: Whitaker, Henry C. (OLC); Hart, Rosemary (OLC)
Cc: Moran, John (OAG); Levi, William (OAG)
Subject: RE: Do you know what the deal is with is?

Will – can w (b) (5) ?

From: Whitaker, Henry C. (OLC) (b) (6) >
Sent: Thursday, May 28, 2020 1:26 PM
To: Willard, Lauren (OAG) (b) (6) >; Hart, Rosemary (OLC) (b) (6) >
Cc: Moran, John (OAG) (b) (6) >; Levi, William (OAG) (b) (6) >
Subject: RE: Do you know what the deal is with is?

Duplicative Information - See Document ID 0.7.2270.5247

Willard, Lauren (OAG)

From: Willard, Lauren (OAG)
Sent: Thursday, May 28, 2020 1:29 PM
To: Whitaker, Henry C. (OLC); Hart, Rosemary (OLC)
Cc: Moran, John (OAG); Levi, William (OAG)
Subject: RE: Do you know what the deal is with is?

Thanks confirmed with Will that we also hav (b) (5), so good that it will come out before finalizing.

From: Whitaker, Henry C. (OLC) (b) (6) >
Sent: Thursday, May 28, 2020 1:26 PM
To: Willard, Lauren (OAG) (b) (6) >; Hart, Rosemary (OLC) (b) (6) >
Cc: Moran, John (OAG) (b) (6) >; Levi, William (OAG) (b) (6) >
Subject: RE: Do you know what the deal is with is?

Duplicative Information - See Document ID 0.7.2270.5247

Willard, Lauren (OAG)

From: Willard, Lauren (OAG)
Sent: Thursday, May 28, 2020 1:35 PM
To: Whitaker, Henry C. (OLC); Hart, Rosemary (OLC)
Cc: Moran, John (OAG); Levi, William (OAG)
Subject: RE: Do you know what the deal is with is?

Just the first thing. We can live with the second.

From: Whitaker, Henry C. (OLC) (b) (6) >
Sent: Thursday, May 28, 2020 1:34 PM
To: Willard, Lauren (OAG) (b) (6) >; Hart, Rosemary (OLC) (b) (6) >
Cc: Moran, John (OAG) (b) (6) >; Levi, William (OAG) (b) (6) >
Subject: RE: Do you know what the deal is with is?

Sorry, I was just talking about (b)(5) per OLC
(b) (6) If you hav (b) (5) I would flag them
ASAP but there may be no time.

From: Willard, Lauren (OAG) (b) (6) >
Sent: Thursday, May 28, 2020 1:29 PM
To: Whitaker, Henry C. (OLC) (b) (6) >; Hart, Rosemary (OLC) (b) (6) >
Cc: Moran, John (OAG) (b) (6) >; Levi, William (OAG) (b) (6) >
Subject: RE: Do you know what the deal is with is?

Duplicative Information - See Document ID 0.7.2270.5073

Pandya, Brian (OASG)

From: Pandya, Brian (OASG)
Sent: Thursday, May 28, 2020 2:41 PM
To: Willard, Lauren (OAG); Murray, Claire M. (OASG)
Subject: RE: online censorship EO
Attachments: 2020PreventingOnlineCensorship.eo2 + PFP Policy version SMD + ODS (OASG 28 May 2020 230PM).docx

Lauren, thanks for sharing this. I've been tied up all morning and afternoon, and I assume this morning's draft is no longer current so I was light with the edits, but here are a couple comments from me on pp. 4-5 on how we

(b) (5) .

From: Willard, Lauren (OAG) (b) (6) >
Sent: Thursday, May 28, 2020 7:38 AM
To: Murray, Claire M. (OASG) (b) (6) >; Pandya, Brian (OASG) (b) (6) >
Subject: Fwd: online censorship EO

Duplicative Information - See Document ID 0.7.2270.7837

Gelber, Alexandra (CRM)

From: Gelber, Alexandra (CRM)
Sent: Thursday, May 28, 2020 5:33 PM
To: Downing, Richard (CRM); Goldfoot, Josh (CRM); Willard, Lauren (OAG)
Cc: Toensing, Brady (OLP); Hardee, Christopher (NSD); Raman, Sujit (ODAG); Motta, Thomas G. (DO) (FBI); Wallace, Benjamin (OLC); Grieco, Christopher (ODAG); Champoux, Mark (OLP); Whitaker, Henry C. (OLC); Wiegmann, Brad (NSD); Winn, Peter A. (OPCL); Pandya, Brian (OASG); Feith, Daniel (ODAG); Shores, Ryan (ODAG); Ramsden, Michelle (OPCL); Proia, Andrew (OPCL); Eyler, Gustav W. (b)(6), (b)(7)(C), (b)(7)(E) per FBI; (b)(6), (b)(7)(C) per FBI (OGC) (FBI); Jones, Darrin E. (ITID) (FBI); Peck, Jessica (CRM); Sabol, Sherry E. (OGC) (FBI)
Subject: RE: Section 230 // May 26 Update

Text of the EO: <https://www.whitehouse.gov/presidential-actions/executive-order-preventing-online-censorship/>

Alexandra R. Gelber
Child Exploitation and Obscenity Section

From: Downing, Richard (CRM)
Sent: Thursday, May 28, 2020 4:36 PM
To: Goldfoot, Josh (CRM) (b)(6) >; Willard, Lauren (OAG) (b)(6) >
Cc: Toensing, Brady (OLP) (b)(6) >; Hardee, Christopher (NSD) (b)(6) >; Raman, Sujit (ODAG) (b)(6) >; Motta, Thomas G. (DO) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI; Wallace, Benjamin (OLC) (b)(6) >; Grieco, Christopher (ODAG) (b)(6) >; Champoux, Mark (OLP) (b)(6) >; Whitaker, Henry C. (OLC) (b)(6) >; Wiegmann, Brad (NSD) (b)(6) >; Gelber, Alexandra (CRM) (b)(6) >; Winn, Peter A. (OPCL) (b)(6) >; Pandya, Brian (OASG) (b)(6) >; Feith, Daniel (ODAG) (b)(6) >; Shores, Ryan (ODAG) (b)(6) >; Ramsden, Michelle (OPCL) (b)(6) >; Proia, Andrew (OPCL) (b)(6) >; Eyler, Gustav W. (b)(6) >; (b)(6), (b)(7)(C), (b)(7)(E) per FBI (OGC) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI; Jones, Darrin E. (ITID) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI; Peck, Jessica (CRM) (b)(6) >; Sabol, Sherry E. (OGC) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI >
Subject: RE: Section 230 // May 26 Update

And it's out:

<https://www.washingtonpost.com/technology/2020/05/28/trump-social-media-executive-order/>

RICHARD W. DOWNING | Criminal Division (b)(6)

From: Goldfoot, Josh (CRM) (b)(6) >
Sent: Wednesday, May 27, 2020 7:10 PM
To: Willard, Lauren (OAG) (b)(6) >
Cc: Toensing, Brady (OLP) (b)(6) >; Hardee, Christopher (NSD) (b)(6) >; Downing, Richard (CRM) (b)(6) >; Raman, Sujit (ODAG) (b)(6) >; Motta, Thomas G. (DO) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI; Wallace, Benjamin (OLC) (b)(6) >; Grieco, Christopher (ODAG) (b)(6) >; Champoux, Mark (OLP) (b)(6) >; Whitaker, Henry C. (OLC) (b)(6) >; Wiegmann, Brad (NSD) (b)(6) >; Gelber, Alexandra (CRM) (b)(6) >; Winn, Peter A. (OPCL) (b)(6) >; Pandya, Brian (OASG) (b)(6) >; Feith, Daniel (ODAG) (b)(6) >; Shores, Ryan (ODAG) (b)(6) >; Ramsden, Michelle (OPCL) (b)(6) >; Proia, Andrew (OPCL) (b)(6) >; Eyler, Gustav W. (b)(6) >; (b)(6), (b)(7)(C), (b)(7)(E) per FBI (OGC) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI; Jones, Darrin E. (ITID) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI; Peck, Jessica (CRM) (b)(6) >; Sabol, Sherry E. (OGC) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI >
Subject: Re: Section 230 // May 26 Update

FYI:



Peter Baker ✓
@peterbakernyt



White House says Trump will sign an executive order "pertaining to social media" tomorrow, but provides no details on what it might say or do.

6:33 PM · 5/27/20 · [Twitter for iPhone](#)

On May 27, 2020, at 9:08 AM, Willard, Lauren (OAG) (b) (6) > wrote:

Hi all, to expedite responses on the ne (b) (5), I've tried to add voting buttons to this email.

Click **yes** if you want to change th (b) (5) to the following:

(b) (5)

Click **no** if you want to keep th (b) (5) as it was:

(b) (5)

Scroll down for more context, and feel free to reach out with questions (or minor tweaks to the new language).

PLEASE VOTE BY NOON TODAY.

Thanks,
Lauren

From: Willard, Lauren (OAG)
Sent: Tuesday, May 26, 2020 11:09 AM
To: Toensing, Brady (OLP) (b) (6) >; Hardee, Christopher (NSD) (b) (6) >; Downing, Richard (CRM) (b) (6) >; Goldfoot, Josh (CRM) (b) (6) >; Raman, Sujit (ODAG) (b) (6) >; Motta, Thomas G. (DO) (FBI) (b) (6), (b) (7)(C), (b) (7)(E) per FBI >; Wallace, Benjamin (OLC) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >; Champoux, Mark (OLP) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >; Wiegmann, Brad (NSD) (b) (6) >; Gelber, Alexandra (CRM) (b) (6) >; Winn, Peter A. (OPCL) (b) (6) >; Pandya, Brian (OASG) (b) (6) >; Feith, Daniel (ODAG) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >; Ramsden, Michelle (OPCL) (b) (6) >; Proia, Andrew (OPCL) (b) (6) >; Eyster, Gustav W. (b) (6) >; (b) (6), (b) (7)(C), (b) (7)(E) per FBI (OGC) (FBI)

(b) (6), (b) (7)(C), (b) (7)(E) P>; Jones, Darrin E. (ITID) (FBI) (b) (6), (b) (7)(C), (b) (7)(E) P>; Peck, Jessica (CRM) (b) (6) >; Sabol, Sherry E. (OGC) (FBI) (b) (6), (b) (7)(C), (b) (7)(E) P>
Subject: RE: Section 230 // May 26 Update

Deliberative Process / Pre-Decisional

Hi all,

Many thanks for the productive conversation this morning. Attached is the current legislation redline with the additional edits discussed. Welcome further thoughts and whether and how to tweak th (b) (5)

We could change to something like the following:

(b) (5)

Original for reference:

(b) (5)

From: Willard, Lauren (OAG)

Sent: Tuesday, May 26, 2020 9:20 AM

To: Toensing, Brady (OLP) (b) (6) >; Hardee, Christopher (NSD) (b) (6) >; Downing, Richard (CRM) (b) (6) >; Goldfoot, Josh (CRM) (b) (6) >; Raman, Sujit (ODAG) (b) (6) >; Motta, Thomas G. (DO) (FBI) (b) (6), (b) (7)(C), (b) (7)(E) per FBI >; Wallace, Benjamin (OLC) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >; Champoux, Mark (OLP) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >; Wiegmann, Brad (NSD) (b) (6) >; Gelber, Alexandra (CRM) (b) (6) >; Winn, Peter A. (OPCL) (b) (6) >; Pandya, Brian (OASG) (b) (6) >; Feith, Daniel (ODAG) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >; Ramsden, Michelle (OPCL) (b) (6) >; Proia, Andrew (OPCL) (b) (6) >; Eyer, Gustav W. (b) (6) >; (b) (6), (b) (7)(C), (b) (7)(E) per FBI (OGC) (FBI) (b) (6), (b) (7)(C), (b) (7)(E) P>; Jones, Darrin E. (ITID) (FBI) (b) (6), (b) (7)(C), (b) (7)(E) P>; Peck, Jessica (CRM) (b) (6) >; Sabol, Sherry E. (OGC) (FBI) (b) (6), (b) (7)(C), (b) (7)(E) P>
Subject: Section 230 // May 26 Update

Deliberative Process / Pre-Decisional

Hi all,

Let's have a brief Section 230 check-in during our regular 10am call for those that can join. In light of various vetting calls and final proofing, we've made a few minor changes to the draft legislation (attached). We can walk through this as well as other current issues during the call.

ODAG is also still consider whether to includ (b)(5) per FBI (b) (5) Chris (or others) – feel free to share with this group the current language under consideration by the DAG.

Best,
Lauren

From: Willard, Lauren (OAG)

Sent: Monday, May 18, 2020 5:31 PM

To: Toensing, Brady (OLP) (b) (6) >; Hardee, Christopher (NSD) (b) (6) >; Downing, Richard (CRM) (b) (6) >; Goldfoot, Josh (CRM) (b) (6) >; Raman, Sujit (ODAG) (b) (6) >; Motta, Thomas G. (DO) (FBI) (b) (6), (b) (7)(C), (b) (7)(E) per FBI >; Wallace, Benjamin (OLC) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >; Champoux, Mark (OLP) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >; Wiegmann, Brad (NSD) (b) (6) >; Gelber, Alexandra (CRM) (b) (6) >; Winn, Peter A. (OPCL) (b) (6) >; Pandya, Brian (OASG) (b) (6) >; Feith, Daniel (ODAG) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >; Ramsden, Michelle (OPCL) (b) (6) >; Proia, Andrew (OPCL) (b) (6) >; Eyer, Gustav W. (b) (6) >; (b) (6), (b) (7)(C), (b) (7)(E) per FBI (OGC) (FBI) (b) (6), (b) (7)(C), (b) (7)(E) P>; Jones, Darrin E. (ITID) (FBI) (b) (6), (b) (7)(C), (b) (7)(E) P>; Peck, Jessica (CRM) (b) (6) >; Sabol, Sherry E. (OGC) (FBI) (b) (6), (b) (7)(C), (b) (7)(E) P>
Subject: RE: Section 230 // May 12 Update

Hi everyone,

We are going to take down tomorrow's Section 230 call, but will stay in touch over email this week on developments.

A quick note, Google reached out to us to offer a briefing on their content moderation and screening practices. If anyone would be interested in attending such a briefing, and has specific topics they want covered, please shoot me an email.

On general timing, we are working on some final tweaks to our collective proposal, but are generally aiming for public release of the Section 230 Summary and Key Takeaways next week. More to come.

Best,
Lauren

From: Willard, Lauren (OAG)

Sent: Tuesday, May 12, 2020 8:55 AM

To: Toensing, Brady (OLP) (b) (6) >; Hardee, Christopher (NSD) (b) (6) >; Downing, Richard (CRM) (b) (6) >; Goldfoot, Josh (CRM) (b) (6) >; Raman, Sujit (ODAG) (b) (6) >; Motta, Thomas G. (DO) (FBI) (b) (6), (b) (7)(C), (b) (7)(E) per FBI >; Wallace, Benjamin (OLC) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >; Champoux, Mark (OLP) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >; Wiegmann, Brad (NSD) (b) (6) >; Gelber, Alexandra (CRM) (b) (6) >; Winn, Peter A. (OPCL) (b) (6) >; Pandya, Brian (OASG) (b) (6) >; Feith, Daniel (ODAG) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >; Ramsden, Michelle (OPCL) (b) (6) >; Proia, Andrew (OPCL) (b) (6) >; Eyler, Gustav W. (b) (6) (b) (6), (b) (7)(C), (b) (7)(E) per FBI (OGC) (FBI) (b) (6), (b) (7)(C), (b) (7)(E) P >; Jones, Darrin E. (ITID) (FBI) (b) (6), (b) (7)(C), (b) (7)(E) P >; Peck, Jessica (CRM) (b) (6) >; Sabol, Sherry E. (OGC) (FBI) (b) (6), (b) (7)(C), (b) (7)(E) P >

Subject: Section 230 // May 12 Update

Duplicative Information - See Document ID 0.7.2270.7443

Grieco, Christopher (ODAG)

From: Grieco, Christopher (ODAG)
Sent: Thursday, May 28, 2020 5:42 PM
To: Gelber, Alexandra (CRM); Downing, Richard (CRM); Goldfoot, Josh (CRM); Willard, Lauren (OAG)
Cc: Toensing, Brady (OLP); Hardee, Christopher (NSD); Raman, Sujit (ODAG); Motta, Thomas G. (DO) (FBI); Wallace, Benjamin (OLC); Champoux, Mark (OLP); Whitaker, Henry C. (OLC); Wiegmann, Brad (NSD); Winn, Peter A. (OPCL); Pandya, Brian (OASG); Feith, Daniel (ODAG); Shores, Ryan (ODAG); Ramsden, Michelle (OPCL); Proia, Andrew (OPCL); Eyler, Gustav W. (b)(6), (b)(7)(C) per FBI (OGC) (FBI); Jones, Darrin E. (ITID) (FBI); Peck, Jessica (CRM); Sabol, Sherry E. (OGC) (FBI)
Subject: RE: Section 230 // May 26 Update

Man, we better get started o (b) (5)

From: Gelber, Alexandra (CRM) (b) (6) >
Sent: Thursday, May 28, 2020 5:33 PM
To: Downing, Richard (CRM) (b) (6) >; Goldfoot, Josh (CRM) (b) (6) >; Willard, Lauren (OAG) (b) (6) >
Cc: Toensing, Brady (OLP) (b) (6) >; Hardee, Christopher (NSD) (b) (6) >; Raman, Sujit (ODAG) (b) (6) >; Motta, Thomas G. (DO) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI >; Wallace, Benjamin (OLC) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >; Champoux, Mark (OLP) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >; Wiegmann, Brad (NSD) (b) (6) >; Winn, Peter A. (OPCL) (b) (6) >; Pandya, Brian (OASG) (b) (6) >; Feith, Daniel (ODAG) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >; Ramsden, Michelle (OPCL) (b) (6) >; Proia, Andrew (OPCL) (b) (6) >; Eyler, Gustav W. (b) (6) (b)(6), (b)(7)(C), (b)(7)(E) per FBI (OGC) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI >; Jones, Darrin E. (ITID) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI >; Peck, Jessica (CRM) (b) (6) >; Sabol, Sherry E. (OGC) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI >
Subject: RE: Section 230 // May 26 Update

Duplicative Information - See Document ID 0.7.2270.7901

Willard, Lauren (OAG)

From: Willard, Lauren (OAG)
Sent: Thursday, May 28, 2020 6:03 PM
To: Gelber, Alexandra (CRM); Downing, Richard (CRM); Goldfoot, Josh (CRM)
Cc: Toensing, Brady (OLP); Hardee, Christopher (NSD); Raman, Sujit (ODAG); Motta, Thomas G. (DO) (FBI); Wallace, Benjamin (OLC); Grieco, Christopher (ODAG); Champoux, Mark (OLP); Whitaker, Henry C. (OLC); Wiegmann, Brad (NSD); Winn, Peter A. (OPCL); Pandya, Brian (OASG); Feith, Daniel (ODAG); Shores, Ryan (ODAG); Ramsden, Michelle (OPCL); Proia, Andrew (OPCL); Eyler, Gustav W. (b)(6), (b)(7)(C), (b)(7)(E) per FBI (OGC) (FBI); Jones, Darrin E. (ITID) (FBI); Peck, Jessica (CRM); Sabol, Sherry E. (OGC) (FBI)
Subject: RE: Section 230 // May 26 Update
Attachments: Section 230 Redline Proposal (DELIBERATIVE) DRAFT 5.28.DOCX; Section 230 OLA Cover Letter_Draft 5.28.docx; Section 230 Section by Section (DELIBERATIVE) 5.28.docx; 5-28-20 Draft Section 230 Key Takeaways & Recommendations_full-page.pdf; Section 230 Key Takeaways and Recommendations_DRAFT 5.28 4pm.docx

Deliberative Process / Pre-Decisional

Hi all,

So a lot has happened in the last couple days, which w (b) (5) this week. On the bright side, a lot more people are focused on Section 230 of the CDA and learning what it means (and OMB clearance may be less of a challenge...) But in light of recent events, we aren't going to try to release our materials this week. It is still important to get the hard work of this fantastic group out there, so hopefully we can still move ahead next week.

I also wanted to share that in the recent conversations with experts gearing up to release, everyone has been extremely impressed by the thoughtfulness of our ideas and the hard work everyone here has put into thinking about such a difficult area of the law. So thanks again for everyone's contributions along the ten months and many "hills" that have gotten us here ☺

I'm attaching for reference what should be the "final" OMB package. If you spot any actual errors or nits, feel free to send – but this is pretty locked down on substance at this point. I'm also attaching the Key Takeaways document. I'll be working on the formatting and final proofreading tomorrow, but welcome any final edits on the description of our efforts in this area. There are already edits in tracked changes in the Word version attached.

I will continue to keep everyone updated as we go forward. And, as always, feel free to reach out with any questions.

Best,
Lauren

PS. Is it Friday yet?? ☺

From: Gelber, Alexandra (CRM) (b) (6) >
Sent: Thursday, May 28, 2020 5:33 PM
To: Downing, Richard (CRM) (b) (6) >; Goldfoot, Josh (CRM) (b) (6) >; Willard, Lauren (OAG) (b) (6) >
Cc: Toensing, Brady (OLP) (b) (6) >; Hardee, Christopher (NSD) (b) (6) >; Raman, Sujit (ODAG) (b) (6) >; Motta, Thomas G. (DO) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) per FBI >; Wallace, Benjamin (OLC) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >; Champoux, Mark (OLP) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >; Wiegmann, Brad (NSD) (b) (6) >; Winn, Peter A. (OPCL) (b) (6) >; Pandya, Brian (OASG) (b) (6) >; Feith, Daniel (ODAG) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >; Ramsden, Michelle (OPCL) (b) (6) >; Proia, Andrew (OPCL) (b) (6) >; Eyler, Gustav W. (b) (6) >; (b)(6), (b)(7)(C), (b)(7)(E) per FBI (OGC) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) p >; Jones, Darrin E. (ITID) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) p >; Peck, Jessica (CRM) (b) (6) >; Sabol, Sherry E. (OGC) (FBI) (b)(6), (b)(7)(C), (b)(7)(E) p >
Subject: RE: Section 230 // May 26 Update

Duplicative Information - See Document ID 0.7.2270.7901

Grieco, Christopher (ODAG)

From: Grieco, Christopher (ODAG)
Sent: Thursday, May 28, 2020 6:04 PM
To: Willard, Lauren (OAG); Shores, Ryan (ODAG)
Subject: RE: final signed order

Beer for Henry!

This has a bunch of comments from people we have been working with.

<https://www.buzzfeednews.com/article/ryanhatesthis/trump-executive-order-section-230-twitter-fact-checking>

From: Willard, Lauren (OAG) (b) (6) >
Sent: Thursday, May 28, 2020 6:03 PM
To: Grieco, Christopher (ODAG) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >
Subject: RE: final signed order

It's definitely in much better shape than yesterday!

From: Grieco, Christopher (ODAG) (b) (6) >
Sent: Thursday, May 28, 2020 5:54 PM
To: Willard, Lauren (OAG) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >
Subject: RE: final signed order

I need to re-read this but it seems like (b) (5) was cleaned up significantly.

From: Willard, Lauren (OAG) (b) (6) >
Sent: Thursday, May 28, 2020 5:31 PM
To: Grieco, Christopher (ODAG) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >
Subject: RE: final signed order

<https://www.whitehouse.gov/presidential-actions/executive-order-preventing-online-censorship/>

From: Grieco, Christopher (ODAG) (b) (6) >
Sent: Thursday, May 28, 2020 4:55 PM
To: Willard, Lauren (OAG) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >
Subject: RE: final signed order

Here is AG comments

<https://twitter.com/bennyjohnson/status/1266106776539336711>

From: Willard, Lauren (OAG) (b) (6) >
Sent: Thursday, May 28, 2020 4:46 PM

To: Shores, Ryan (ODAG) (b) (6) >
Cc: Grieco, Christopher (ODAG) (b) (6) >
Subject: RE: final signed order

I can ask Rosemary to see what was the final version, but I think it should be close to what I sent last.

From: Shores, Ryan (ODAG) (b) (6) >
Sent: Thursday, May 28, 2020 4:45 PM
To: Willard, Lauren (OAG) (b) (6) >
Cc: Grieco, Christopher (ODAG) (b) (6) >
Subject: RE: final signed order

Okay thanks

From: Willard, Lauren (OAG) (b) (6) >
Sent: Thursday, May 28, 2020 4:44 PM
To: Shores, Ryan (ODAG) (b) (6) >
Cc: Grieco, Christopher (ODAG) (b) (6) >
Subject: RE: final signed order

I don't

From: Shores, Ryan (ODAG) (b) (6) >
Sent: Thursday, May 28, 2020 4:43 PM
To: Willard, Lauren (OAG) (b) (6) >
Cc: Grieco, Christopher (ODAG) (b) (6) >
Subject: final signed order

Do you have the final signed order?

Willard, Lauren (OAG)

From: Willard, Lauren (OAG)
Sent: Friday, May 29, 2020 8:30 AM
To: Pandya, Brian (OASG)
Subject: Re: Implementing the Online Platforms EO

(b) (5). But would be great to have your help in any event!

Sent from my iPhone

On May 29, 2020, at 8:25 AM, Pandya, Brian (OASG) (b) (6) > wrote:

Hi Lauren,

(b) (5) ?

- (b) (5)
- (b) (5)

I assume our Section 230 core group will be involved in any event, but I'm interested to be involved with either or both efforts.

Thanks,
Brian

Brian H. Pandya
Deputy Associate Attorney General
U.S. Department of Justice
Direc (b) (6)
Mobil (b) (6)

Willard, Lauren (OAG)

From: Willard, Lauren (OAG)
Sent: Friday, May 29, 2020 11:57 AM
To: Shores, Ryan (ODAG); Grieco, Christopher (ODAG); Feith, Daniel (ODAG); Raman, Sujit (ODAG); Pandya, Brian (OASG); Whitaker, Henry C. (OLC); Wallace, Benjamin (OLC); Toensing, Brady (OLP); Hankey, Mary Blanche (OLA (b) (6)); Herlihy, Brianna (PAO)
Subject: Section 230 call today
Attachments: Section 230 Redline Proposal (DELIBERATIVE) DRAFT 5.28.DOCX; Section 230 Key Takeaways and Recommendations_DRAFT 5.29_CLEAN.docx

Hi Team,

In advance of our 12:30 touch base on the fun and quickly-moving world of Section 230, I wanted to send out the following materials to group. Attached is a copy of our current OMB draft legislative proposal, as well as the draft of our Key Takeaways document. And for those that haven't seen in the EO from yesterday is available here: <https://www.whitehouse.gov/presidential-actions/executive-order-preventing-online-censorship/>

First, we can touch base on timing/process, with input from OLA/OPA folks.

Second, we can discuss a few updates on substance. Below are a few new areas to consider on the Section 230 efforts. Original text is black, our current proposal in red, and brand new draft changes in blue.

(b) (5)
(b) (5)
[Redacted text block]

(b) (5)
(b) (5)
[Redacted text block]

(b) (5)
(b) (5)
[Redacted text block]

(b) (5)
[Redacted text block]

(b) (5)

Lauren S. Willard

Counselor to the Attorney General

U.S. Department of Justice

M (b) (6)

(b) (6)

Willard, Lauren (OAG)

From: Willard, Lauren (OAG)
Sent: Friday, May 29, 2020 12:21 PM
To: Hardee, Christopher (NSD)
Cc: Champoux, Mark (OLP); Josh Goldfoot; Toensing, Brady (OLP); Downing, Richard (CRM)
Subject: RE: Section 230 // May 26 Update

Thanks Chris. I'll see what I can do to still address the concern given our timeframe. We can also still provide edits after it goes to OMB.

Welcome views from others on this chain. There is a delicate balance of fixing a wording issue consistent with what the group intended and re-opening the draft for new edits, so ideally we can just make it a clarifying nit rather than a substantive change 😊

From: Hardee, Christopher (NSD) (b) (6) >
Sent: Friday, May 29, 2020 12:16 PM
To: Willard, Lauren (OAG) (b) (6) >
Cc: Champoux, Mark (OLP) (b) (6) >; Josh Goldfoot (b) (6) >; Toensing, Brady (OLP) (b) (6) >; Downing, Richard (CRM) (b) (6) >
Subject: Re: Section 230 // May 26 Update

Maybe add to h (b) (5) [redacted]
[redacted]. In many / most case (b) (5) [redacted]
[redacted].

Sent from my iPhone

On May 29, 2020, at 11:26 AM, Willard, Lauren (OAG) (b) (6) > wrote:

?
Hi Chris,

The caveat o (b) (5) [redacted]
[redacted]. Perhaps there is a clearer fix, though, lik (b) (5) [redacted]? Welcome suggestions that could more precisely attain the same goal.

Best,
Lauren

From: Hardee, Christopher (NSD) (b) (6) >
Sent: Friday, May 29, 2020 11:16 AM
To: Willard, Lauren (OAG) (b) (6) >
Cc: Champoux, Mark (OLP) (b) (6) >; Josh Goldfoot (b) (6) >; Toensing, Brady (OLP) (b) (6) >; Downing, Richard (CRM)

(b) (6) >

Subject: Re: Section 230 // May 26 Update

Lauren, can you remind me ho

(b) (5)

[Redacted]

You might consid (b) (5)

Thanks. Sorry for the late flag.

-Chris

Sent from my iPhone

On May 28, 2020, at 6:02 PM, Willard, Lauren (OAG) (b) (6) > wrote:

Duplicative Information - See Document ID 0.7.2270.7342

[Redacted]

Willard, Lauren (OAG)

From: Willard, Lauren (OAG)
Sent: Friday, May 29, 2020 1:09 PM
To: Shores, Ryan (ODAG); Grieco, Christopher (ODAG); Feith, Daniel (ODAG); Raman, Sujit (ODAG); Pandya, Brian (OASG); Whitaker, Henry C. (OLC); Wallace, Benjamin (OLC); Toensing, Brady (OLP); Hankey, Mary Blanche (OLA (b) (6)); Herlihy, Brianna (PAO)
Subject: RE: Section 230 call today

Thanks everyone for jumping on the call just now. Here is where I think we ended on next steps and assignments.

1. **Chris and Ryan** to work on a 1-2 page set short TPs and counter-examples to explain (b) (5)
2. **Henry/Ben/Dan** to work on (b)(5) per OLC along the lines below and as discussed on the call.
3. **Brady/Sujit/Lauren/Brian** to work on follow-up with experts and scholars we already spoke with to touch base again early next week with more information on proposal and hopefully getting continued support for broader effort.
4. **Mary Blanche** and (b) (6) to continue assisting on OLA outreach.
5. **Brianna** to help think about which reporters to reach out to on background as we get closer to launch, and to help with press release and framing of our public launch.

Please feel free to reach out with any questions, thanks everyone for your help on this quick pivot!

Best,
Lauren

From: Willard, Lauren (OAG)
Sent: Friday, May 29, 2020 11:57 AM
To: Shores, Ryan (ODAG) (b) (6); Grieco, Christopher (ODAG) (b) (6); Feith, Daniel (ODAG) (b) (6); Raman, Sujit (ODAG) (b) (6); Pandya, Brian (OASG) (b) (6); Whitaker, Henry C. (OLC) (b) (6); Wallace, Benjamin (OLC) (b) (6); Toensing, Brady (OLP) (b) (6); Hankey, Mary Blanche (OLA) (b) (6); Herlihy, Brianna (PAO) (b) (6)
Subject: Section 230 call today

Duplicative Information - See Document ID 0.7.2270.6272

Grieco, Christopher (ODAG)

From: Grieco, Christopher (ODAG)
Sent: Friday, May 29, 2020 1:38 PM
To: Feith, Daniel (ODAG); Shores, Ryan (ODAG); Willard, Lauren (OAG); Raman, Sujit (ODAG); Pandya, Brian (OASG); Whitaker, Henry C. (OLC); Wallace, Benjamin (OLC); Toensing, Brady (OLP)
Subject: RE: Section 230 call today

I think it makes clarify what we are already getting at, and it would, to some extent, make it clearer to courts which hav (b) (5). I think this is a (b) (5).

From: Feith, Daniel (ODAG) (b) (6) >
Sent: Friday, May 29, 2020 1:34 PM
To: Shores, Ryan (ODAG) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >; Willard, Lauren (OAG) (b) (6) >; Raman, Sujit (ODAG) (b) (6) >; Pandya, Brian (OASG) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >; Wallace, Benjamin (OLC) (b) (6) >; Toensing, Brady (OL) (b) (6) >
Subject: RE: Section 230 call today

Apologies if I'm missing something, but how is that different from what our proposal already does (and, arguably, what the current version of 230 does too)?

From: Shores, Ryan (ODAG) (b) (6) >
Sent: Friday, May 29, 2020 1:32 PM
To: Grieco, Christopher (ODAG) (b) (6) >; Willard, Lauren (OAG) (b) (6) >; Feith, Daniel (ODAG) (b) (6) >; Raman, Sujit (ODAG) (b) (6) >; Pandya, Brian (OASG) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >; Wallace, Benjamin (OLC) (b) (6) >; Toensing, Brady (OL) (b) (6) >
Subject: RE: Section 230 call today

Or what about this:

(b) (5)
(b) (5)
(b) (5)
* (b) (5), the (b) (5). Or, put differentl (b) (5)

From: Grieco, Christopher (ODAG) (b) (6) >
Sent: Friday, May 29, 2020 1:10 PM
To: Willard, Lauren (OAG) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >; Feith, Daniel (ODAG) (b) (6) >; Raman, Sujit (ODAG) (b) (6) >; Pandya, Brian (OASG) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >; Wallace, Benjamin (OLC)

(b) (6) >; Toensing, Brady (OL) (b) (6) >

Subject: RE: Section 230 call today

Minus ola/opa

Is another way t (b) (5)

(b) (5)

(b) (5)

I still think there ar (b) (5)

From: Willard, Lauren (OAG) (b) (6) >

Sent: Friday, May 29, 2020 11:57 AM

To: Shores, Ryan (ODAG) (b) (6) >; Grieco, Christopher (ODAG) (b) (6) >; Feith, Daniel (ODAG) (b) (6) >; Raman, Sujit (ODAG) (b) (6) >; Pandya, Brian (OASG) (b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >; Wallace, Benjamin (OLC) (b) (6) >; Toensing, Brady (OL) (b) (6) >; Hankey, Mary Blanche (OLA) (b) (6) >; Herlihy, Brianna (PAO) (b) (6) >

Subject: Section 230 call today

Duplicative Information - See Document ID 0.7.2270.6143

(b) (6) >; Toensing, Brady (OLP) (b) (6) >

Subject: RE: Section 230 call today

That's how I am thinking about. It clearly separate (b) (5), and provides separate rules for each:

(b) (5)

(b) (5)

(b) (5)

(b) (5)

From: Grieco, Christopher (ODAG) (b) (6) >

Sent: Friday, May 29, 2020 1:38 PM

To: Feith, Daniel (ODAG) (b) (6) >; Shores, Ryan (ODAG) (b) (6) >; Willard, Lauren (OAG) (b) (6) >; Raman, Sujit (ODAG) (b) (6) >; Pandya, Brian (OASG)

(b) (6) >; Whitaker, Henry C. (OLC) (b) (6) >; Wallace, Benjamin (OLC)

(b) (6) >; Toensing, Brady (OLP) (b) (6) >

Subject: RE: Section 230 call today

Duplicative Information - See Document ID 0.7.2270.6272

Willard, Lauren (OAG)

From: Willard, Lauren (OAG)
Sent: Friday, May 29, 2020 3:31 PM
To: Levi, William (OAG); Barnett, Gary (OAG)
Subject: RE: Section 230
Attachments: Section 230 Redline Proposal (DELIBERATIVE) DRAFT 5.28.DOCX; Section 230 OLA Cover Letter_Draft 5.28.docx; Section 230 Section by Section (DELIBERATIVE) 5.28.docx; Section 230 Reform Proposal One-Pager.docx; Section 230 Key Takeaways and Recommendations_DRAFT 5.29_CLEAN.docx

Sure!

While the legislative package is mostly finished at this point, we are just starting to think about implementation of the EO - so would be great to get help there as that process starts up. Gary, here's the executive order in case you haven't seen it: <https://www.whitehouse.gov/presidential-actions/executive-order-preventing-online-censorship/>. Chris Grieco, Ryan Shores, and Brian Pandya are starting to give thought to this already, so will loop you in.

Also attached are some preliminary items that may be helpful for background reading this weekend and can follow up with more. This includes the OMB package (cover letter, section-by-section, and redline), as well as a one-page summary of our proposal and the longer Key Takeaways Report from our 230 Workshop and Listening Sessions.

In terms of meetings, we just finished productive call with Hawley's staff and don't have anything else scheduled for today.

Also for both your benefit and Will's, here are the folks are involved in the Section 230 effort internally, which started last August and included a big Workshop last February. We have a pretty big team that has been working hard on these issues for some time. To the extent we want more ODAG and other folks in the meetings with the AG, just let me know! Trying to be nimble in responding, but can certainly draw from our deep bench.

"Tiger Team"

ODAG: Chris Grieco (lead in ODAG), Ryan Shores, Sujit Raman, and Dan Feith OASG: Brian Pandya OLP: Brady Toensing (with help from Mark Champoux) OLC: Henry Whitaker and Ben Wallace

Working Group (same as above plus):

CRM: Richard Downing, Josh Goldfoot (CCIPS), Jessica Peck (CCIPS), Alexandra Gelber (CEOS) NSD: Chris Hardee (and nominally Brad Wiegmann) OPCL: Peter Winn, Michelle Ramsden FBI: Darrin Jones, Gregg Motta, Sherry Sabol, an (b)(6), (b)(7)(C) per FBI CIV: Gus Eyster OPA: Brianna Herlihy OLA: Mary Blanche Hankey and (b) (6)

-----Original Message-----

From: Levi, William (OAG) (b) (6) >

Sent: Friday, May 29, 2020 2:44 PM

To: Willard, Lauren (OAG) (b) (6) >; Barnett, Gary (OAG) (b) (6) >

Subject: Section 230

Lauren — can you loop Gary in to the meetings on this? This is a big issue for just one person — you! — to be handling everything on, esp after the madness of yesterday. He will need the materials too to get smart. Thank you both.