

Your readers should know they also benefit from Section 230

Public photography rights apply to private citizens same as journalists

Back in November, this column urged you to take time to explain to readers the “how” of how you do your jobs – the importance of accurate data gathering, the need for readers to understand how journalists source a story and write it in an unbiased and accurate manner, giving readers the information to make important decisions.

Today let’s take that a step further. There are two concepts being discussed in this country that pose significant harm to publishers and journalists. It is up to us, users of the First Amendment regularly, to help our community understand how these seemingly great ideas endanger them as readers.

The first idea is the concept that Section 230 of the 1996 Communications Decency Act needs to be scrapped. This is an idea that President Trump, and even our Senator Josh Hawley, has advocated repeatedly, talking about how social media platforms use this law’s protection to influence what information goes out to the public on those sites.

More than a year ago, Sen. Hawley introduced his Ending Support for Internet Censorship Act. In introducing this proposal, Sen. Hawley said, “With Section 230, tech companies get a sweetheart deal that no other industry enjoys: complete exemption from traditional publisher liability in exchange for providing a forum free of political censorship.

Unfortunately, and unsurprisingly, big tech has failed to hold up its end of the bargain ... There’s a growing list of evidence that shows big tech companies making editorial decisions to censor viewpoints they disagree with. Even worse, the entire process is shrouded in secrecy because these companies refuse to make their protocols public.

This legislation simply states that

if the tech giants want to keep their government-granted immunity, they must bring transparency and accountability to their editorial processes and prove that they don’t discriminate.”

We’ve talked about Section 230 before. The short version is that it protects you, the publisher, from liability for unlawful content posted on your website. Many of you do not monitor every comment posted on your website on stories prior to the comments being posted. Section 230 protects you from liability until the offended party goes through a process of giving you notice of the unlawful content and asking it to be removed.

It is true that, as it is introduced, Sen. Hawley’s bill would NOT change the right you have as a smaller publisher. It is designed to apply only to companies with more than 30 million active monthly users in the U.S., more than 300 million active monthly users worldwide, or who have more than \$500 million in global annual revenue. Obviously, it’s targeted at companies like Facebook and Twitter, among others.

But everyone knows that sometimes good intentions get lost in the process. It would be a disaster if smaller publishers were to get dragged into this roundup. There are calls to the hotline where someone is complaining about something that was posted on a paper’s Facebook site.

This federal law creates a process to protect you – you notify the original poster of the complaint and advise that the content will be taken down unless they take steps to ensure your protection as the publisher. If they do not respond to you, you are allowed to remove the content and you are protected from liability for having it posted originally

on your site.

We cannot lose those rights and this is a side of that story that may not get told unless YOU tell it. Readers need to know that there are important benefits in Section 230 and the baby should not be thrown out with the bathwater.

Another issue drawing public attention is the right of anyone, you or any other citizen, to photograph persons in a public space. This comes up in all kinds of contexts – sometimes it’s police saying you cannot photograph them at active police scenes, sometimes it is parents complaining about photographing children in public or it can be citizens going about normal activity anywhere on the street.

You have a right to photograph ANYONE in any public location, if you are not on private property and if what you are photographing is visible to anyone else standing where you are standing. Everyone is aware of the importance of the George Floyd photographs. What if the birdwatcher in Central Park had not photographed the woman who called police to falsely report he was threatening her while he was birdwatching in Central Park?

And it’s not just journalists who need to protect these rights – many of these photographs are made by private citizens. Help them understand that these photographs, made under their First Amendment rights, benefit them, too. They should never hesitate to record on their phones a scene that seems wrong.



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