R SHEET ON
ONLINE CONTENT POLICY

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BACKGROUND

The Internet has allowed for an unprecedented level of connectivity across the globe. Accordingly, online platforms that harness this connectivity and facilitate communication between users now play a vital role in how society functions and expresses political ideas.

But, some critics argue that, at its worst, this constant connection can isolate like-minded users in echo chambers and make them frighteningly vulnerable to manipulation. As a result, the role that online platforms should take in overseeing these interactions has sprung to the forefront of policy discussions.

Today's landscape of online content law is complex and nuanced. Section 230 of the Communications Decency Act, which largely immunizes platforms from liability for content posted by users, is an important safe harbor that encourages the development of innovative online services, including platform-curated services. Nevertheless, it has been criticized for giving platforms too little incentive to prevent the spread of harmful content. Similarly, while Section 512 of the Digital Millennium Copyright Act aimed to balance the interests of online platforms and copyright owners by devising procedures for removing pirated content, that law has also been criticized both for going too far and not far enough. As the Internet becomes even more ubiquitous, this tug-of-war regarding First Amendment freedoms will almost surely intensify.

GENERAL PRINCIPLES FOR ONLINE CONTENT POLICY

In developing policies that will shape the future of online content, R Street recommends the following key principles.

Account for All Online Actors

The online space is a complex ecosystem of large platforms, small forums, startup services, active speakers, passive readers, government actors and many more.

SUMMARY

• The internet allows for unprecedented connectivity between users across the globe.

• Regulations imposed upon platforms to limit harmful speech, such as "fake news," or to placate worries about political biases can cause significant harm without adding noticeable benefits.

• Lawmakers should consider the four general principles discussed herein before taking steps to regulate the methods platforms use to moderate content.

• Taking these into account, regulators can work with platforms and content generators to develop a framework that facilitates online discussion while limiting the potential harm it can inflict.

Accordingly, online content policy needs to consider these diverse actors and their frequently conflicting, yet often converging, interests.

Many proposed online content regulations are designed to address the largest platforms and generally, large firms like Facebook can afford to comply. But when smaller startups and other competing platforms are forced to comply with outsized regulations, they may be driven out of the marketplace by lawsuits and the increased costs associated with such a regime. As a result, the largest platforms may become insulated from competition, exacerbating the problems that regulators sought to limit in the first place. Therefore, policymakers should consider all stakeholders in the ecosystem, not just specific companies.

These discussions can be facilitated by engaging in a multi-stakeholder process to work with both users and platforms. This would allow all parties, including regulators, users and platform owners to express their unique perspectives about ways that online content policy could affect them.

Keep the Law Up to Date with Technology

In the ever-evolving technological landscape, regulations quickly become outdated. This can stifle future innovation by locking in obsolete technologies. More importantly, it can result in laws that simply make no sense after further technological development.

A classic example of this is the Stored Communications Act, which allows law enforcement to access emails without a warrant, if the emails have been stored for over 180 days. This scheme may have made sense when users generally downloaded mail to their computers. However, this logic is highly outdated in the age of webmail, as users routinely keep emails for years. Lawmakers should work quickly to update outdated laws and regulations, and should carefully consider whether ex ante regulations are justified before enacting them.

Encourage Online Speech

Amid the rise of fake news and concerns regarding political biases of platforms, popular discussion is shifting toward ways to limit the spread of content online. But the Internet is a worldwide forum of ideas that should be encouraged to grow as necessary. While some may use this connectivity to do harm, any regulations that seek to limit the proliferation of content effectively limit our ability to connect with others across the globe. Furthermore, calls for regulation are often based on fears that may not be grounded in fact. Therefore, regulators should prioritize free speech online and carefully consider the impact that regulations have on online forums before allowing unfounded concerns to bring about unnecessary regulation.

Be Aware of Unintended Censorship

Most would agree that companies, people or governments should not be able to censor others' views online at will. But, when placed in the wrong hands, even well-intended online policy can be used as a tool for censorship. The most stunning example of this came out of Section 512, a law dealing with online copyright infringement. Though this may not seem an obvious vehicle for censoring opinions, one dentist found a way: She required her patients to sign agreements that transferred copyrights of their online reviews of her office, and then used that transfer agreement to invoke Section 512 to have any negative reviews removed.

Lawmakers are not keen to have their laws abused this way—Congress quickly passed a law prohibiting the dentist's copyright scheme—but a better course of action would be to avoid the possibility of censorship in the first place. It is therefore necessary to scrutinize carefully any proposed regulation that could potentially be used for censorship purposes.

CONCLUSION

The Internet has drastically changed the way we interact in society and has opened up entire new business models to harvest this unprecedented connectivity. However, this connectivity also leaves users vulnerable to isolation and fake news shared online. While regulators may design well-intended responses to these problems, the solutions often do more harm than good. Therefore, before taking affirmative steps to regulate online content, policymakers should account for all online actors, ensure existing regulations stay up to date with the practical realities of ever-evolving technology and carefully consider the ways in which regulations can be used to censor content online.

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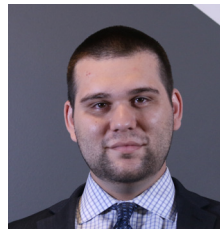
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