

# STATEMENT OF PRINCIPLES ON ONLINE FREE SPEECH

## *Policy Status*

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## *Issues*

- Innovation
- Privacy and Security

## *Task Forces*

- Communications and Technology

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## *Tags*

- Competition
- Encryption
- Online Privacy
- Online Speech
- Section 230
- Social Media
- STFS 2018

## ***Summary***

The American Legislative Exchange Council recognizes that the Internet has transformed American life, and will continue to do so – and that the Digital Revolution has been overwhelmingly positive. American innovators and entrepreneurs have led the development of new products and services that have made life easier in countless ways and have kept the American economy dynamic, growing and strong. Perhaps the greatest benefit of the Internet has been empowering individuals to express themselves in ways that were simply unimaginable a generation ago. Even in 1996, Congress recognized that the Internet has “flourished, to the benefit of all Americans, with a minimum of government regulation.” 47 U.S.C. § 230(a)(4). This is even more true today: keeping the Internet “unfettered by Federal or State regulation,” 47 U.S.C. § 230(b)(2), has ensured that America is the undisputed leader in Internet services. With the notable exception of Chinese and Russian sites (which are protected, and heavily controlled, by their repressive governments), essentially all of the world’s most popular online platforms that host user-generated content are American. The Internet is the greatest American success story of all time – and a triumph for First Amendment values. For all its benefits, the Digital Revolution has also created a host of difficult problems, especially regarding online speech. Congress also recognized this in 1996: Section 230 of the Communications Decency Act ensured that online platforms would not be held liable for content created by their users. Without this immunity, today’s online platforms would never have gotten off the ground: it simply would not have been possible to filter user generated content on anything like the scale that exists today. The Internet would not have become the vibrant forum for free expression it is today. Section 230’s immunity has never been absolute: websites lose it when they bear responsibility, even in part, for developing illegal content. Moreover, Congress never limited the enforcement of federal criminal law. In short, the Internet was not intended to be lawless, but Congress did recognize that making online intermediaries responsible for user content would both discourage innovation and “Good Samaritan” self-policing by responsible websites. The American Legislative Exchange Council recognizes that debates over online speech, and who should police it, have reached a new level of intensity. To guide state and federal policymakers in addressing such concerns, and especially in ensuring the effective enforcement of existing laws, ALEC has developed the following principles regarding online free speech consistent with American values of free expression and free enterprise.

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## Statement:

The American Legislative Exchange Council recognizes that the Internet has transformed American life, and will continue to do so – and that the Digital Revolution has been overwhelmingly positive. American innovators and entrepreneurs have led the development of new products and services that have made life easier in countless ways and have kept the American economy dynamic, growing and strong. Perhaps the greatest benefit of the Internet has been empowering individuals to express themselves in ways that were simply unimaginable a generation ago.

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For all its benefits, the Digital Revolution has also created a host of challenges, especially regarding online speech. Congress recognized this in 1996: Section 230 of the Communications Decency Act ensured that online platforms would not be held liable for content created by their users. Without this immunity, today’s online platforms would never have gotten off the ground: it simply would not have been possible to filter user generated content on anything like the scale that exists today. The Internet would not have become the vibrant forum for free expression it is today.

Section 230’s immunity has never been absolute: websites lose it when they bear responsibility, even in part, for developing content. Moreover, Congress never limited the enforcement of federal criminal or intellectual property law. In short, the Internet was not intended to be lawless, but Congress did recognize that making online intermediaries responsible for user content would both discourage innovation and “Good Samaritan” self-policing by responsible websites.

The American Legislative Exchange Council recognizes that debates over online speech, and who should police it, have reached a new level of intensity. To guide state and federal policymakers in addressing such concerns, and especially in ensuring the effective enforcement of existing laws, ALEC has developed the following principles regarding online free speech consistent with American values of free expression and free enterprise:

I. The private sector should continue to lead the way. Private companies have built the online platforms that empower individuals to express themselves. Gone are the days when three broadcast networks both controlled access to news and shaped public opinion. Technology has given every American the opportunity to express their own opinions and communicate directly with public officials, celebrities, and other citizens, and given them access to news from a variety of sources. The rights protected by the First Amendment – to free expression, free association and the free exercise of religion – have never been more accessible or meaningful.

II. Private companies make their own rules. Private companies have every right to set their own rules for their own services regarding permissible content. But these rules should be publicly available and easily understandable by the companies users. Even the most popular service is still voluntary. Of course, users need clear disclosure of the rules for each service, so they can decide which to use. At the same time, to remain effective, content moderation tactics cannot be fully disclosed, lest bad actors learn how to evade detection. Website operators must balance the need for a certain degree of opacity as to exact content moderation practices with clarity as to the general rules that users must follow.

III. No “Fairness Doctrine” for the Internet. For decades, the Federal government attempted to force broadcasters to be neutral in their coverage. In practice, the “Fairness Doctrine” stifled heterodox speech and enforced the bland orthodoxy of the political establishment. The vagueness of the Fairness Doctrine gave politicians broad discretion to punish broadcasters that dared to criticize them. Abolishing the Doctrine was one of the greatest accomplishments of the Reagan era.

IV. Deputizing online intermediaries generally backfires. Congress enacted Section 230 to encourage online platforms to experiment with ways to empower users to host content – and the law has succeeded spectacularly. Today’s Internet simply would not exist if websites were liable for all user content they hosted. Congress also recognized that holding online intermediaries responsible for user speech would actually create a perverse incentive to do less self-policing, or none at all. Eroding Section 230’s Good Samaritan immunity will backfire. Instead, policymakers should ensure the vigorous prosecution of individual bad actors as well as of websites that cross the line between being intermediaries and actually helping to develop unlawful content.

V. Competition and disruptive innovation are the best protectors of consumers. Concerns about the dominance of a single online platform are nothing new: since 1986, we have seen a series of platforms rise and fall. No one company has managed to preserve its dominance because no company can master disruptive innovation. This ongoing competition to stay on top, with new disruptors emerging seemingly every day, has protected consumers better than any government intervention ever could. No company or industry sector should be immune from the antitrust laws; and if a company’s dominance, or a merger, can be shown to harm consumer welfare, existing antitrust law should be enforced. But there is no need to rewrite antitrust doctrine to protect online speech, and doing so will likely harm consumers.

VI. Anonymity is an essential aspect of free expression and online privacy. Transparency has both benefits and costs. Some users will not speak out freely if they are required to use their real names or post other identifying information because of fear of intimidation and harassment, both in the online and physical world. However, private platforms are free to decide the level of anonymity. They should also work to protect sensitive information of their users. It is simply not for the government to decide which approach is best. Undermining anonymity undermines free speech, as the courts have long recognized in protecting the right to speak, associate, and make charitable donations offline.

VII. The Internet’s democratization of speech must be allowed to continue. The Internet has allowed for individuals, organizations, and businesses to reach millions with their message at a fraction of the cost of traditional media. This explosion in free speech has been an equalizing force in our democracy. Government regulations or private rules that would make it more difficult to spread a non-electioneering communication message should be avoided.

VIII. Encryption protects free expression. Technologies like encryption do not merely enhance privacy, they enable free expression, too. The more secure users feel that they can communicate privately, the more free they will be to express themselves. Restricting encryption tools will have a chilling effect on free speech online.

Approved by the ALEC Board of Directors May 24, 2018.