ML STRATEGIES

Twitter, Facebook, Google Heads Testify on Section 230 and Local Journalism

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VIEWPOINT TOPICS

- Telecommunications & Technology

On Wednesday, October 28, the Senate Committee on Commerce, Science and Transportation held a much-anticipated **hearing** titled, "Does Section 230's Sweeping Immunity Enable Big Tech Bad Behavior?" The witness line-up featured Twitter Chief Executive Officer (CEO), Jack Dorsey, Alphabet and Google CEO, Sundar Pichai, and Facebook CEO, Mark Zuckerberg, all three of whom testified remotely and weeks earlier had been issued subpoenas by the Committee. While the hearing's title focused on Section 230 of the Communications Act, which provides social media platforms with broad immunity for third-party content posted on their platforms, as well as immunity for platform policies that remove or moderate posted content, Members of the Committee also raised issues concerning privacy and the competitive impact on local journalism.

Proponents of Section 230 contend that the law is the foundation of free speech on the Internet. However, in recent years, both Republican and Democratic Members of Congress have been critical of social media platforms and their legally protected content moderation policies – but for different reasons. Many Republicans contend that social media platforms have abused their discretion afforded under the law and are biased against conservative view points, while Democrats have been critical of these same platforms for not sufficiently combatting the spread of hate speech and misinformation, particularly with regard to public health and elections. Mr. Zuckerberg himself expressed this tension in his opening statement, stating "Democrats often say we don't remove enough content, while Republicans often say we remove too much".

At the hearing, many Republican Members of the Committee focused their questions on Mr. Dorsey and Twitter's decisions to flag several tweets by President Donald Trump and to block links to a controversial New York Post article on Vice President Joe Biden's son, Hunter Biden. (Twitter has since reversed that policy.) Senator Roger Wicker (R-MS), the Chairman of the Committee, as well as Senators Cory Gardner (R-CO) and Marsha Blackburn (R-TN), focused on Twitter's treatment of President Trump's tweets and tweets by Iran's Ayatollah Ali Khamenei, who has advocated for violence against Israel and denied The Holocaust. Mr. Dorsey responded that Khamenei's tweets, as the head of a state, were statements of national policy and public "saber rattling" – as opposed to tweets inciting domestic civil violence – and his denial of The Holocaust did not fall into one of three discreet categories of misinformation for which Twitter has specific policies, *i.e.*, media manipulation, public health (particularly as it relates to COVID), and civic integrity (particularly with regard to election interference and voter suppression). Mr. Dorsey also emphasized that Twitter has not "censored" the President's tweets, but rather has flagged them to provide context.

In response to Republican concerns over political bias on social media platforms, Chairman Wicker in his opening statement highlighted his bill, **S. 4534, the Online Freedom and Viewpoint Diversity Act**, as a possible legislative solution. The bill would significantly narrow the scope of Section 230 by, among other things, eliminating a platform's liability protection for moderating or restricting access to posted content that is "otherwise objectionable".

In contrast, Mr. Dorsey and Mr. Zuckerberg emphasized transparency as a plausible and effective means to address concerns that social media platforms are not sufficiently accountable for their content moderation policies under Section 230. Similarly, Senator John Thune (R-SD) also emphasized the need for increased transparency and highlighted two bipartisan bills he has introduced: **S. 4066, the Platform Accountability and Consumer Transparency (PACT) Act**, which he introduced with Senator Brian Schatz (D-HI), and **S. 2763, the Filter Bubble Transparency Act**, co-sponsored by Senator Warner (D-VA). The PACT Act bill would require online platforms to more explicitly and clearly state their content moderation policies and imposes additional conditions on immunity for moderating content. The Filter Bubble Transparency Act would provide transparency and choice with regard to algorithmic functionality.

Democratic Members of the Committee criticized the timing of the hearing, noting that it was six days before the election and could unethically affect the arc of the political debate. Senator Maria Cantwell (D-WA), the Ranking Member of the Committee, as well as Senators Amy Klobuchar (D-MN), Jon Tester (D-MT), Richard Blumenthal (D-CT), and Schatz raised concerns that the hearing was a political campaign tactic to impact the information that voters receive through the social media companies represented at the hearing.

Furthermore, Democratic Members of the Committee were largely focused on election integrity and policies to protect users from hate speech and misinformation, particularly misinformation regarding the election and public health. Company policies aimed at addressing these concerns could be affected by proposals aimed at limiting the immunity afforded under Section 230's current scope. Mr. Zuckerberg responded to several Democratic Member inquiries on this front by outlining Facebook's recent efforts to thwart foreign interference in next week's election. Mr. Zuckerberg testified that, since 2016, Facebook has beefed up its artificial intelligence (AI) systems to identify fake accounts and has forged partnerships with other tech companies, law enforcement, and national intelligence agencies to combat hostile foreign meddling from the likes of Russia, Iran, and China. The result, according to Mr. Zuckerberg, is that Facebook has removed over 100 networks of fake accounts that engage in a coordinated effort to spread misinformation and sow division. Many Democratic Members asserted that Facebook can do more, such as Senator Gary Peters (D-MI), who praised the company's assistance to law enforcement in thwarting a plot to kidnap Michigan Governor Gretchen Whitmer, but questioned if Facebook can do more to deter violent and extremist content that has the potential to radicalize users.

Lastly, Ranking Member Cantwell also focused on the impact that large social media platforms are having on local journalism. In her opening remarks, she highlighted the findings of a **67-page report** she issued on Tuesday, which found that tech platforms and their dominance in online advertising have had a devastating impact on local news outlets. At the hearing, Ranking Member Cantwell asked Mr. Pichai about a 30% to 50% loss of ad revenue for local media as a result of Google's advertising practices. Mr. Pichai responded by observing that the Internet in general has been a "tremendously disrupting force" to journalism. He further stated that Google directs online traffic to news publishers, shares a majority of revenue back to publishers, and has pledged over $1 billion to publishers to license news content.

Congress will continue to debate possible reforms to Section 230 next year in the 117th Congress. At the hearing, Chairman Wicker pledged that future hearings and deliberations on this matter are in store. Members on both sides of the aisle have expressed a willingness to amend Section 230, but given the motivations for reform are very different, reaching bipartisan compromise on legislation may prove difficult.

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Christian Tamotsu Fjeld draws on two decades of Capitol Hill experience to support clients in building relationships, shaping policy, and engaging effectively with the federal government. His experience working with Congress and his insights help clients anticipate federal developments and advance their priorities with clarity and confidence.

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