Mark Zuckerberg just told Congress to upend the internet

Facebook supports rewriting Section 230, and it's starting to lay out the changes it wants. That's the big takeaway from a nearly four-hour grilling of Facebook CEO Mark Zuckerberg, Alphabet CEO Sundar Pichai, and Twitter CEO Jack Dorsey. The point was quickly lost in a pre-election political scuffle — but in the coming months, it'll be one of the most important things to watch.

Yesterday, the Senate Commerce Committee held a hearing about Section 230 of the Communications Decency Act, a foundational internet law. The event was supposed to examine whether Section 230 protections — which protect web services and sites of all sizes — "enable Big Tech Bad behavior." Witnesses came prepared with arguments against that premise. Dorsey cited Twitter's transparency center and algorithm-free timeline option, Zuckerberg expounded on Facebook's support for voting and journalism, and Pichai promoted Google's many free services.

Pichai and Dorsey both offered measured defenses of the law
But their defenses of Section 230 differed dramatically. Pichai offered a measured warning, urging the committee to "be very thoughtful" about any changes. Dorsey was blunter: not only would eroding the law's core "collapse how we communicate on the internet," it would stop Twitter's moderators from making users feel safe on the site.

Facebook took a different tack. "The debate about Section 230 shows that people of all political persuasions are unhappy

with the status quo. People want to know that companies are taking responsibility for combatting harmful content — especially illegal activity — on their platforms. They want to know that when platforms remove content, they are doing so fairly and transparently. And they want to make sure that platforms are held accountable," Zuckerberg said in opening testimony. "Changing it is a significant decision. However, I believe Congress should update the law to make sure it's working as intended."

Zuckerberg has broadly called for more internet regulation over the past few years. But until now, Facebook has largely either stayed quiet on Section 230 or critiqued specific proposals. In March, it warned that the EARN IT Act could be used to roll back encryption and user privacy. In June, it said a White House executive order would "[expose] companies to potential liability for everything that billions of people around the world say."

Facebook supported the controversial FOSTA-SESTA bill in 2018
Now, Zuckerberg says "we support the ideas around transparency and industry collaboration that are being discussed in some of the current bipartisan proposals." While he didn't name a specific bill, his statements most closely match the PACT Act, which was introduced in June as a bipartisan "scalpel" instead of a regulatory hammer. Under the PACT Act, companies would have to disclose their moderation standards and establish a formal takedown appeals system. They would also have to remove court-ordered illegal content within 24 hours.

If Facebook starts lobbying for the PACT Act, that's potentially a big deal. Facebook was a key backer of FOSTA-SESTA, a bill that removed Section 230 protections for content violating anti-prostitution laws. That bill became law in 2018, and Facebook itself was fairly well-equipped to deal with the changes — while smaller sites like Craigslist got hit hard. The PACT Act could have similar effects. Facebook already has a legion of moderators and a policy team that

releases detailed transparency reports. A smaller site could have far fewer resources. The PACT Act has a "small business provider" exception, but it's a fairly narrow one.

Mike Masnick of *Techdirt* called out Zuckerberg's testimony before the hearing, saying bluntly that Facebook was ready to "throw the open internet under the bus." And Congress could have followed up on Zuckerberg's statement in several ways. It would be great to understand, for instance, how much Facebook would have to change its business model to comply with something like the PACT Act. Hearing Google and Twitter's positions on the issue would be equally interesting.

The hearing was, unsurprisingly, a total mess

But Congress — unfortunately yet unsurprisingly — wasn't actually interested in Section 230. Republicans pummeled the CEOs with angry questions about individual moderation decisions — at one particularly bizarre moment, Sen. Ted Cruz (R-TX) asked Dorsey "who the hell elected you" to run Twitter. Some Democrats denounced the hearing as a transparent political ploy, including PACT Act co-author Sen. Brian Schatz (D-HI), who called the whole hearing a "sham" and an "embarrassment" to the committee. Others pivoted to questions about election integrity or misinformation, but again, it had little to do with the actual law.

Section 230 reform is no longer about Big Tech

Arguably, if Congress were actually serious about passing Section 230 reform, it would stop dragging "Big Tech" CEOs into hearings about it. The session's most unintentionally revealing moment came from Sen. Shelley Capito (R-WV), who declared herself "skeptical" of claims that carving up Section 230 would hurt small sites. Capito asked Dorsey to defend the position — apparently oblivious to the possibility of actually inviting one of those small site owners to testify.

Some kind of Section 230 change looks increasingly likely. Democrats and Republicans have basically incompatible goals

for reform, but they’re both in favor of it, so it could stay on the table no matter who wins next week’s election. Facebook may be taking a more active role in backing it. Even Dorsey seemed to ambiguously endorse something like the PACT Act, saying that “the best way to address our mutually-held concerns is to require the publication of moderation processes and practices, a straightforward process to appeal decisions, and best efforts around algorithmic choice.” (It’s not clear whether he was referring to legislation or some kind of industry standard.)

This kind of amendment would have serious implications for websites of all sizes. And if one of the biggest companies in Silicon Valley is going to throw its weight behind it, that’s a much bigger deal than some senators’ political grandstanding.

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