What Republicans are getting wrong about Section 230 of the Communications Decency Act

We finally put Vox Media's *The Vergecast* and *The Weeds* into one show — and, of course, it's about Section 230 of the Communications Decency Act.

Vox senior correspondent and host of *The Weeds* Matt Yglesias talks to *Verge* editor-in-chief and host of *The Vergecast* Nilay Patel to explain what Section 230 of the Communications Decency Act really means and how members of Congress may be misinterpreting it.

Below is a lightly edited excerpt of Patel and Yglesias getting into — you guessed it — the weeds on Section 230. You can hear this and more in the latest episode of *The Vergecast*.

Matt Yglesias: I have been hearing more and more from Republican members of Congress about something called Section 230, which they think is a big problem with technology companies, and that there's an anti-conservative bias on the tech platforms.

Nilay Patel: But not according to any of the data.

MY: But according to them, and Section 230 has something to do with it.

NP: Yes. So Section 230 is a section of the Communications Decency Act. It's the law that allows platform companies to moderate their platforms. And the thing about Section 230, in

particular, that I think this audience will find interesting is it is really easy to read, like if you have just a passing familiarity with how legislation is written. It is super easy to read. It's plain on its face. And then the people who wrote it are still around. Ron Wyden, who's the co-author, is still in Congress. So he is very happy to tell you what he meant when he wrote these very easy-to-read words.

So the history of it and what it was meant to do was allow platform companies to moderate their platforms, to take down things that they didn't want there or to promote things they wanted to see promoted. That freedom is the heart of how every platform works.

MY: And this Communications Decency Act was established back in the '90s, right?

NP: Yeah, the instigating event behind Section 230 is a case called *Stratton Oakmont v. Prodigy*. You might remember Stratton Oakmont is the firm from *The Wolf of Wall Street*. So Prodigy ran these message boards, and the users on the message boards said Stratton Oakmont is a sham. This is a bad company you shouldn't do business with. It's all fraud all the way up and down. The movie hadn't come out yet, so I don't think other people knew about it. So Stratton Oakmont sued prodigy and said that because Prodigy moderates these boards and removes some content that violates the rules while promoting other content, that they are exerting editorial control over this information, and thus, you're liable for it the same way a newspaper would be.

MY: So that's not like a libel context, right? So like if we at *Vox* write an article that accuses Stratton Oakmont of being fraudulent, we are potentially legally vulnerable. They can sue us. Now, as it turns out, they actually were fraudulent.

NP: Turns out, this was true.

MY: So this is one of many reasons that we try not to publish

inaccurate smears: you could get sued for it. We are liable for the content on our site. And so their position was because Prodigy is maintaining editorial control over these message boards, the company itself (which, presumably, has deeper pockets then random message board guys) is legally responsible for libel that occurs.

NP: Yep. And the court agreed with him, which was not an entirely expected result. There is a lot of legal wrangling. This phrase is going to come back to haunt us and maybe bury me personally, but there's a lot of legal wrangling over a "platform" versus a "publisher," and if you exert this much control, are you a publisher? So the court agreed and says, "You are liable."

Here's the important part to the conservative side, and what I think everyone is intentionally missing: Section 230 was written to overrule that case. Platforms should not be treated as publishers. If you allow users to publish content on your platform, you are not liable for that content at all. It's just a flat rule.

MY: So only the person who actually writes the thing?

NP: Yep. So, for example, *Vox* has a great YouTube channel. YouTube and Google are not responsible for videos that *Vox* publishes.

MY: Right. So if I go on Twitter and I libel people, the people who I have libeled can sue me, but they can't sue Twitter. But the rhetoric is sometimes that I'll hear Republicans say, "These companies are acting as publishers, not as neutral platforms."

NP: Yep. Which is the old law. The thing that Section 230 was written to get rid of.

MY: The legal decision, I guess, was that the platform could be held responsible because they were exerting editorial

control. So you would need to say, “No, well, we’re not moderating this at all” in order to obtain your immunity. But the new law says it doesn’t matter.

NP: Yep. You can just go read it. I encourage everyone to just read it themselves. It is not a complicated thing. I’m going to read it to you now.

Here’s Section 230 C1: “No provider or user of an interactive computer service, a platform, shall be treated as the publisher or speaker of any information provided by another information content provider.”

That’s all. That’s literally all it says. “No provider shall be treated as the publisher.” Everybody’s getting it wrong, but that’s all it says.

MY: That’s actually pretty straightforward. But what are the politics here? What is it that Republicans in Congress are trying to accomplish?

NP: Total control of all information disseminated on the internet, as far as I can tell. But that might be the over-read. That’s just me. I live in a world where I talk about Section 230 literally every day. But what they’re after is there are only a handful of giant information platforms on the internet. We’re rapidly approaching a stage where there might be like six companies in the world. And if you look at Twitter, Google, and Facebook, they control a massive amount of information. They all have rules about how they moderate their platforms. Republicans think they are being over-moderated, and that is a rich argument for their base. Mostly because the hard right base engages in a lot of speech that a lot of these moderation policies ban. So that’s a lot of racism. That’s a lot of sexism and transphobia. Bigotry in general, hate speech, and so on. Then there’s harassment, which every platform wants to ban in one way or another or moderate in some way or another. If you are a Republican, and

you've got this base where – increasingly, it seems – every day, there's a new scandal of racism or sexism or bigotry (I might add the president engaged in some overt racism just recently), well then, these moderation decisions are disproportionately impacting you. And so they feel like these policies are biased against their speech and this is a free speech area.

I think one thing everyone will agree universally is that these companies are not necessarily well-run. And even if they were perfectly run, the nature of writing and enforcing speech regulation is such that you're still going to do a bad job. The United States has been trying to develop a free speech policy in our courts for 220-plus years, and we're pretty bad at it. Four guys working at Facebook aren't going to do a good job in 20 years. So there's that problem, right? Where does a pretty funny joke cross the line to being overtly bigoted? It really depends on context. We all understand. It depends on who you think you are speaking to. Whether it's a group of your friends or whether, suddenly, Twitter's algorithm grabs your speech and amplifies you to millions of people. How many little Twitter scandals are just a throwaway comment that somehow went viral, and now someone's crying? It happens every day.

The other problem that I keep coming back to is that there's only a tiny handful of companies. These companies are monopolies in their space. So you see Republicans saying that their free speech and rights are being violated. The president is saying they're violating our free speech rights. But these companies are not the government. They're private companies that are free to do whatever they want by statute. But there's nowhere to go. So if you feel like tweeting is important, and the president feels like tweeting is important, and you're constantly being bombarded with moderation decisions for your base, then it probably does feel like these companies are censoring you. And then you might say that they've overstepped

their bounds and might as well just be liable for everything the way a newspaper would be, even though the statute doesn’t say at all.

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