Section 230

What it is, why it affects your startup, and how to get involved

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What is Section 230?

- 1990s - web forums were getting sued over potentially defamatory comments being made by users
  - Courts considered the role of moderation, effectively creating a disincentive against moderation
- Congress wanted to incentivize moderation, so then-Reps. Cox and Wyden wrote Section 230 of the Communications Decency Act
  - As a website, you’re not liable for the user content you host, whether or not you moderate
What is Section 230?

Often called the 26 words that created the Internet

“No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”
What is Section 230 NOT?

- No distinction between “platform” and “publisher”
- No requirement for neutrality to qualify
- No impact on federal criminal law,
- No impact on intellectual property protections
- No protections for content the company helped create
- No impact on the First Amendment
  - Either for speakers, or for companies
How does Section 230 impact my startup?

● If you host user-generated content, you’re relying on Section 230
  ○ Applies far beyond social media posts - comment sections, photo storage, message sharing

● Without Section 230, you could be sued for anything your users post
  ○ Not limited to illegal content, bad actors will weaponize costly lawsuits

● Even if you think you’d ultimately win, it could cost tens or hundreds of thousands of dollars
  ○ Even with Section 230, it can cost tens of thousands of dollars to get a bad lawsuit dismissed

● It’s near impossible to keep a platform for user-generated content pristine as you scale
  ○ Content moderators and algorithms are both expensive and imperfect
  ○ If you build it, they will come
Why is Section 230 relevant now?

- Section 230 was amended for the first time in 2018 with SESTA-FOSTA
- Now it’s the political football du jour
  - Democrats say Section 230 allows big tech companies to host harmful content, including misinformation, hate speech, illegal content
  - Republicans say Section 230 allows big tech companies to unfairly censor conservative voices online
- Everyone is focused on the biggest companies
Key policymakers for Section 230

- House Committees
  - Energy and Commerce
  - Judiciary
- Senate Committees
  - Commerce
  - Judiciary
- Federal Agencies:
  - Federal Communications Commission
Why do startups need to get involved?

● For the most part, policymakers are concerned about—and hearing from—big tech companies

● But the biggest companies will likely be fine no matter what happens
  ○ They have the resources to spend on content moderation
  ○ And they have resources to fend off litigation
How do startups get involved?

- If you have an experience or opinion on a policy issue, share it with policymakers, other startups, your entrepreneur support organization, and advocacy organizations like Engine.
- Targeted outreach to members of the committee that governs the issue you care about may be more effective than reaching out to your member, but both are helpful and important.
Outreach and Advocacy Strategies

- Reach out through phone calls, letters, or setting up a meeting
- Members often hold town halls and roundtables on specific issues—seek to attend those that are relevant
- Many members employ a business liaison—seek to build a relationship, if so
  - They can be a good first point of contact for several issues
- Consult your local ESO to see if they have a standing relationship with your member
- Collective voices are better than one
  - Engage with organizations like Engine
    - Provide feedback and insights on issues you encounter so they are reflected
    - Join coalition letters—orgs. often send letters to policymakers on various issues; these letters are made stronger with each additional startup signatory
    - Take part in national advocacy events like Congressional Startup Day