

United States Senate
WASHINGTON, DC 20510

August 31, 2020

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Pai:

I write to you today regarding the invitation for public comment on the Petition for Rulemaking filed by the National Telecommunications and Information Administration (NTIA) seeking clarification on section 230 of the 1996 Communications Decency Act. While the administration's focus is on the moderation of speech, I write to you regarding an urgent and related issue regarding section 230, the sale of illicit drugs online.

Section 230 states, "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."¹ To this day, these 26 words protect online platforms from liability for content posted by users on their platforms. At the time, the Internet was in its infancy, and this short section was an elegant solution to a simple problem: how to encourage platforms to remove pornography and hate speech without making them liable as publishers in the law. No one could have envisioned how much the world would evolve from the simple chatrooms of the 1990s. Today, nearly all of us carry the Internet in our pocket, using our phones to call cabs, message friends and family across town and across the globe, book hotel rooms and vacation rentals, buy groceries, and undertake a nearly infinite array of activities – all still covered by this one, now outdated section of the law.

That protection under the law has given rise to the innovation and ascendancy of Silicon Valley and the U.S. tech sector, but it also has a dark side, shielding companies from the proliferation of illegal content on their platforms. Today, a user can find illicit narcotics easily through Instagram, TikTok, Facebook and other social media platforms. Over four months in 2018, researchers at the University of California, San Diego used an algorithm to capture Instagram posts on drugs, finding more than 1200 posts advertising illicit drugs for sale and generating an inquiry from at least one clear buyer.² Facebook's own Transparency Report noted that it had removed more than 7.9 million posts in just the first quarter of 2020.³ A 2015 study by Carnegie Mellon University found that revenues from online illicit drug sales grew from between \$15 million in 2012 to \$180 million in 2015.⁴ That has only grown exponentially since that time, and impacts every corner of the Internet, with roughly half taking place on the "Surface Web"

¹ 47 U.S.C. § 230

² <https://www.bostonmagazine.com/health/2019/10/1/instagram-drug-market/>

³ <https://transparency.facebook.com/community-standards-enforcement#regulated-goods>

⁴ <https://www.wired.com/2015/08/crackdowns-havent-stopped-dark-webs-100m-yearly-drug-sales/>

(Google, Facebook, etc.) and half on the “Dark Web” (which requires a special browser to access), with drug dealers often operating in both interchangeably.

The rise in Internet crime is especially problematic during the COVID-19 pandemic. Since the country began social distancing measures, the Internet Crime Complaint Centre at the Federal Bureau of Investigation (FBI) reports that daily digital crime has risen by 75%.⁵ The National Center for Missing and Exploited Children (NCMEC) has experienced a 93.33% increase in online child exploitation this year compared to last year.⁶

Over the past year, I have met with federal law enforcement, private companies, and other stakeholders to discuss the impact of the opioid crisis in my state of West Virginia, and the growing threat of online drug sales. In 2018, the Department of Homeland Security (DHS) seized almost 5,000 pounds of fentanyl – to kill every American four times over.⁷ Officials report that the vast majority of it was ordered over the Internet and sent by mail from China. In one recent takedown, the Joint Criminal Opioid and Darknet Enforcement (J-CODE) team – a joint interagency effort comprising the FBI, DEA, DHS, CBP, USPS, DOJ, and DOD – made 61 arrests and shut down 50 Darknet accounts, confiscating 300 kg of drugs and over \$7 million.⁸ According to the FBI, taking down one Darknet drug vendor has the same effect as taking down a traditional mid-level size criminal organization. This is not just a problem on the Darknet, however. Research by the National Association of Boards of Pharmacy (NABP) found that when searching online for prescription opioids, nearly 91% of the first search results led users to an illegal online drug seller offering prescription opioids. In 2019, NABP found that of nearly 12,000 websites they surveyed, 90% were operating illegally.⁹ Former Food and Drug Administration Commissioner Scott Gottlieb summarized, “The easy availability and online purchase of these products from illegal drug peddlers is rampant and fuels the opioid crisis.”¹⁰

At the same time, it is increasingly clear that social media companies have turned a blind eye to the problem, blaming their inability to keep up with the proliferation of illegal content on faulty algorithms and human behavior, when the real issue is profits. Companies could devote more resources to moderation and more R&D on new programs and technology to seek out illegal content, but they are absolved of this responsibility by Section 230. When overworked and underpaid moderation teams do find illegal content, they often simply take down the offending content and do not share it with law enforcement, arguing that this would infringe on the user’s privacy rights.

⁵ <https://www.economist.com/international/2020/08/17/during-the-pandemic-a-digital-crimewave-has-flooded-the-internet>

⁶ <https://www.missingkids.org/blog/2020/covid-19-and-missing-and-exploited-children>

⁷ https://www.dhs.gov/sites/default/files/publications/19_0424_s1_opioid-fact-sheet_v2.pdf

⁸ <https://www.fbi.gov/news/pressrel/press-releases/j-code-announces-61-arrests-in-its-second-coordinated-law-enforcement-operation-targeting-opioid-trafficking-on-the-darknet>

⁹ <https://nabp.pharmacy/wp-content/uploads/2019/11/Rogue-Rx-Activity-Report-2019.pdf>

¹⁰ <https://www.wsj.com/articles/fda-wants-better-control-of-online-opioid-sales-1522877801>

In the 24 years since Section 230 was enacted in 1996, our world has changed, and nothing has seen – or caused – more of that upheaval than the Internet. Google didn't exist until 1996, and Facebook wasn't launched until 2004, and Twitter wasn't found until 2006. The iPhone wasn't introduced until 2007, while companies like AOL, Myspace, and Netscape have risen and fallen into obscurity over that time. And certainly, Section 230 was not written with companies like Uber and Airbnb in mind. I believe that while some aspects of Section 230 should be preserved, the overbroad interpretation of this provision in the courts has provided protection for bad actors online, even if they are knowingly participating or allowing illicit and criminal activity on their platforms and failing to work with law enforcement to stop such behavior.

Let me be clear. One opioid sold online is too many, and the reticence and deflection with which many social media companies have approached this problem is unacceptable. That is why I am calling on the FCC, in the course of their review of NTIA's petition, to determine whether Section 230 needs to be amended to clarify that it does not shield companies from liability for criminal activity conducted on their platforms and that companies must cooperate with federal, state, and local law enforcement. We must amend Section 230 to reflect the way that the Internet impacts our society today – both good and bad. It is past time to hold these sites accountable for the economic and human damage they have caused to our communities.

I again applaud you for undertaking this review of Section 230, and I thank you for your consideration of my request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe Manchin III", written in a cursive style.

Joe Manchin III
United States Senator