



August 31, 2018

TO: Members, Committee on Energy and Commerce

FROM: Committee Majority Staff

RE: Hearing on “Twitter: Transparency and Accountability”

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## I. INTRODUCTION

The Committee on Energy and Commerce will hold a hearing on Wednesday, September 5, 2018, at 1:30 p.m. in 2123 Rayburn House Office Building. The hearing is entitled “Twitter: Transparency and Accountability.”

## II. WITNESS

- Jack Dorsey, Co-founder and CEO, Twitter, Inc.

## III. BACKGROUND

### A. Twitter

Twitter, Inc. (“Twitter”) is a San Francisco, California based company that operates a self-described “global platform for public self-expression and conversation in real time.”<sup>1</sup> The company’s main offerings are Twitter, an online news and social networking service which allows users to post messages in the form of 280 character “tweets,”<sup>2</sup> and Periscope, a mobile application that allows users to post and share video broadcasts.<sup>3</sup> Twitter is accessible via app and mobile and desktop web browsers. Periscope can be accessed via mobile app and can be broadcast on Twitter.

The original Twitter platform was developed by the podcasting company Odeo and released publicly in 2006.<sup>4</sup> Later that same year Evan Williams, Biz Stone, Jack Dorsey, and other employees of the company acquired the platform as well as other Odeo assets under the auspices of a newly formed entity called Obvious Corp.<sup>5</sup>

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<sup>1</sup> Twitter Inc. (2017) *Form 10-K 2017*. Retrieved from SEC EDGAR website [https://www.sec.gov/Archives/edgar/data/1418091/000156459018003046/twtr-10k\\_20171231.htm](https://www.sec.gov/Archives/edgar/data/1418091/000156459018003046/twtr-10k_20171231.htm)

<sup>2</sup> Wikipedia, Twitter <https://en.wikipedia.org/wiki/Twitter#Technology> (retrieved August 2, 2018)

<sup>3</sup> Twitter, Inc., *Form 10-K*.

<sup>4</sup> Arrington, Michael (July 15, 2006) “Odeo Releases Twtr” Techcrunch <https://techcrunch.com/2006/07/15/is-twtr-interesting/>

<sup>5</sup> Malik, Om (October 25, 2006) “Odeo RIP, Hello Obvious Corp.” GigaOM <https://gigaom.com/2006/10/25/odeo-rip-hello-obvious-corp/>

Twitter achieved rapid growth and adoption. In 2007, approximately five thousand tweets were sent per day. The next year that number reached roughly 300,000. By 2009, the figure was nearly 35 million per day, and by 2010 it had grown to 50 million.<sup>6</sup> Today, the platform posts around 500 million tweets a day, or roughly six thousand tweets per second.<sup>7</sup> According to various reports, Twitter is among the top ten or fifteen most viewed websites in the world.<sup>8</sup> Most of Twitter's revenue is derived from charging third parties to advertise on the service.<sup>9</sup> For the fiscal year 2017, the company reported total revenue of \$2.44 billion, of which \$2.11 billion was from advertising.<sup>10</sup>

Twitter Terms of Service provides that "Twitter gives you a personal, worldwide, royalty-free, non-assignable and non-exclusive license to use the software provided to you as part of the Services. This license has the sole purpose of enabling you to use and enjoy the benefit of the Services as provided by Twitter, in the manner permitted by these Terms."<sup>11</sup> Twitter maintains that "(a)ll Content is the sole responsibility of the person who originated such Content. We may not monitor or control the Content posted via the Services and, we cannot take responsibility for such Content." At the same time, Twitter maintains "Twitter Rules" that, along with the Terms of Service and Privacy Policy, constitute the company's "User Agreement." According to the Rules, the company states "We believe that everyone should have the power to create and share ideas and information instantly, without barriers." The Rules also hold that "We believe in freedom of expression and open dialogue, but that means little as an underlying philosophy if voices are silenced because people are afraid to speak up." Towards that end, the Rules state that the company will prohibit certain "behavior" on the site, including speech that constitutes "Hateful conduct."<sup>12</sup>

If a Twitter user's account has been limited, suspended, or locked, a user may appeal the action taken by Twitter.<sup>13</sup> If a user's account has been limited because it may have violated the Twitter Rules, the user can still browse Twitter, but cannot send tweets. The user will be asked to complete "certain actions...[which] may include verifying your email address, adding a phone number to your account, or deleting Tweets that are in violation" of the Twitter Rules.<sup>14</sup> If a user's account has been suspended or locked, the user can appeal the decision by contacting the Twitter support team.<sup>15</sup> In doing so, the user will be asked to explain "why you do not believe your account violated the Twitter Rules" and will be asked to provide their name, Twitter

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<sup>6</sup> Beaumont, Claudine (February 23, 2010) "Twitter Users Send 50 Million Tweets Per Day. . ." Telegraph <https://www.telegraph.co.uk/technology/twitter/7297541/Twitter-users-send-50-million-tweets-per-day.html>

<sup>7</sup> Internet Live Stats, Twitter Usage Statistics <http://www.internetlivestats.com/twitter-statistics/> (retrieved August 2, 2018).

<sup>8</sup> See, e.g., Alexa Top 500 Global Websites (11) <https://www.alexa.com/topsites>; SimilarWeb, Top Websites Ranking (7) <https://www.similarweb.com/top-websites>; (both retrieved August 2, 2018).

<sup>9</sup> Twitter, Inc., *Form 10-K*.

<sup>10</sup> *Id.*

<sup>11</sup> See "Twitter Terms of Service" <https://twitter.com/en/tos#update> (retrieved Aug. 7, 2018)

<sup>12</sup> See "The Twitter Rules" <https://help.twitter.com/en/rules-and-policies/twitter-rules> (retrieved Aug. 7, 2018)

<sup>13</sup> <https://help.twitter.com/forms/general>

<sup>14</sup> <https://help.twitter.com/en/managing-your-account/locked-and-limited-accounts>

<sup>15</sup> <https://help.twitter.com/forms/general?subtopic=suspended>

username, and email.<sup>16</sup> Following the request, Twitter will reach out to the user to address the appeal.

Twitter has made several changes to its platform rules and regulations in the past two years. In December 2017, Twitter announced new rules to “reduce hateful conduct and abusive behavior.”<sup>17</sup> The company reported in January 2018 that since June 2017, they removed “more than 220,000 applications in violations of our rules, collectively responsible for more than 2.2 billion low-quality Tweets.”<sup>18</sup> In addition, Twitter announced new initiatives to improve the platform, including: “Investing further in machine-learning capabilities that help us detect and mitigate the effect on users of fake, coordinated, and automated account activity; limiting the ability of users to perform coordinated actions across multiple accounts in Tweetdeck and via the Twitter API; continuing the expansion of our new developer onboarding process to better manage the use cases for developers building on Twitter’s API. This will help us improve how we enforce our policies on restricted uses of our developer products, including rules on the appropriate use of bots and automation.”<sup>19</sup>

## **B. News Consumption on Twitter and Social Media**

Ninety-three percent of Americans get their news online,<sup>20</sup> with two-thirds reporting that they obtain at least some news from social media.<sup>21</sup> Among the latter group, the top three preferred outlets are reportedly Facebook, YouTube, and Twitter, respectively.<sup>22</sup> The use of social media sites for news consumption varies widely by age; research indicates that whereas 26 percent of U.S. adults aged 50 and older use social media sites for news, that number rises to 54 percent for those 18-29.<sup>23</sup>

After years of consistent growth in the consumption of news on social media, recent concerns about unreliable information online reportedly drove down the use of such sites in the last year.<sup>24</sup> In the United States, reports indicate that “weekly social media use for news grew steadily from 27% in 2013 to a peak of 51% before falling back significantly this year (2018) to

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<sup>16</sup> *Id.*

<sup>17</sup> [https://blog.twitter.com/official/en\\_us/topics/company/2017/safetypoliciesdec2017.html](https://blog.twitter.com/official/en_us/topics/company/2017/safetypoliciesdec2017.html)

<sup>18</sup> [https://blog.twitter.com/official/en\\_us/topics/company/2018/2016-election-update.html](https://blog.twitter.com/official/en_us/topics/company/2018/2016-election-update.html)

<sup>19</sup> *Id.*

<sup>20</sup> Pew Research Center (June 6, 2018) “Digital News Fact Sheet” <http://www.journalism.org/fact-sheet/digital-news/>

<sup>21</sup> Shearer, Elisa and Gottfried, Jeffrey (September 7, 2017) “News Use Across Social Media Platforms 2017” <http://www.journalism.org/2017/09/07/news-use-across-social-media-platforms-2017/>

<sup>22</sup> *Id.*

<sup>23</sup> Mitchell, Amy; Simmons, Katie; Matsa, Katerina; and Silver, Laura (January 11, 2018) “Publics Globally Want Unbiased News Coverage, but Are Divided on Whether Their News Media Deliver” <http://assets.pewresearch.org/wp-content/uploads/sites/2/2018/01/09131309/Publics-Globally-Want-Unbiased-News-Coverage-but-Are-Divided-on-Whether-Their-News-Media-Deliver-Full-Report-and-Topline-UPDATED.pdf>

<sup>24</sup> Newman, Nic, “Digital News Report,” Reuters Institute/University of Oxford <http://www.digitalnewsreport.org/survey/2018/overview-key-findings-2018/> (retrieved August 3, 2018)

45%.”<sup>25</sup> In addition, social media news has been found to be viewed as less trustworthy than other sources. According to the same report:

Across all countries, the average level of trust in the news in general remains relatively stable at 44%, with just over half (51%) agreeing that they trust the news media they themselves use most of the time. By contrast, 34% of respondents say they trust news they find via search and fewer than a quarter (23%) say they trust the news they find in social media.<sup>26</sup>

Twitter has served as a prominent source of breaking news since its initial public launch.<sup>27</sup> It has also contributed to public participation in high profile events by allowing individuals to narrate and share information about evolving situations with other participants, as well as broadcast news to the world at large.<sup>28</sup> Twitter and other social media sites have thus provided individuals the ability to communicate and receive news free from the intermediation of traditional journalists in what has been described as the “social media revolution.”<sup>29</sup>

### **C. Criticisms of Content Moderation Practices**

On July 25, 2018, “Vice News” reported that Twitter was limiting the visibility of certain public figures by preventing their profiles from appearing in the site’s auto-populated drop-down search bar results.<sup>30</sup> The highest profile individuals impacted were associated with one political party, therefore, allegations were made that, whether intentionally or as the result of unintentional algorithmic bias, the incident reflected a willingness to limit exposure of to censor disfavored viewpoints and political ideas.<sup>31</sup> Twitter responded to the controversy by stating that the search auto-population issue was not confined to members of only one political party; that the issue had to do with how other users interacted with the accounts in question, rather than the account holders themselves; and that the company had made changes to its search algorithm in an attempt to correct the issue.<sup>32</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> McCracken, Harry (June 13, 2018) “Twitter is taking a new pass at making the news come to you” Fast Company <https://www.fastcompany.com/40584397/twitter-is-taking-a-new-pass-at-making-the-news-come-to-you>

<sup>28</sup> See, e.g., Kassim, Saleem (July 3, 2012) “Twitter Revolution: How the Arab Spring Was Helped By Social Media” <https://mic.com/articles/10642/twitter-revolution-how-the-arab-spring-was-helped-by-social-media#.Qmw6uTZeA>; Rueda, Manuel, “How Twitter became the main source for real news in Venezuela” <https://splinternews.com/how-twitter-became-the-main-source-for-real-news-in-ven-1793857665>; Hunt, Teddy “4 Instances When Social Media Fueled a Revolution” <https://kimgarst.com/4-instances-social-media-fueled-revolution> (retrieved August 6, 2018).

<sup>29</sup> Benioff, Marc (May 11, 2012) “Welcome to the social media revolution” BBC News <https://www.bbc.com/news/business-18013662>

<sup>30</sup> Thompson, Alex (July 25, 2018) “Twitter appears to have fixed ‘shadow ban’ of prominent Republicans like the RNC chair and Trump Jr.’s spokesman” Vice.com [https://news.vice.com/en\\_us/article/43paqq/twitter-is-shadow-banning-prominent-republicans-like-the-rnc-chair-and-trump-jrs-spokesman](https://news.vice.com/en_us/article/43paqq/twitter-is-shadow-banning-prominent-republicans-like-the-rnc-chair-and-trump-jrs-spokesman)

<sup>31</sup> *Id.*

<sup>32</sup> Gadde, Vijaya and Beykpour, Kayvon (July 26, 2018) “Setting the record straight on shadow banning” [https://blog.twitter.com/official/en\\_us/topics/company/2018/Setting-the-record-straight-on-shadow-banning.html](https://blog.twitter.com/official/en_us/topics/company/2018/Setting-the-record-straight-on-shadow-banning.html)

This is not the first incident where issues have been raised. For example, during the 2016 Presidential campaign primaries, the company was accused of suspending a politically focused account and de-emphasizing popular hashtags which criticized the campaign of a major party candidate. The company responded to the allegations by stating that the suspension of the account in question was a mistake.<sup>33</sup> In October 2017, Twitter barred the campaign video of a member of this Committee from its ad platform, deeming it “inflammatory” and “likely to evoke a strong negative reaction,” though this decision was later reversed.<sup>34</sup> And as recently as August, the company admitted it had “made an error” after suspending the Twitter account of an activist who had parodied the tweets of a New York Times editorial board member.<sup>35</sup>

Twitter’s live video streaming product, Periscope, is similar to offerings by competitors such as Facebook Live that have gained popularity while also disrupting the traditional video marketplace. The offering has become a tool for everyone from journalists reporting on breaking news, to parents sharing kids’ sporting events with other family members, to emergency services personnel alerting of active fire scenes and traffic incidents, but it also enables the distribution of problematic content with fewer opportunities for timely moderation. Reports of predatory conduct on this platform have raised concerns.<sup>36</sup>

#### **D. Relevant Federal Law and Enforcement**

##### **Section 230 of the Communications Decency Act**

The Communications Decency Act (“CDA”) was a bipartisan agreement enacted as Title V of the Telecommunications Act of 1996, signed into law by President Bill Clinton. CDA had complementary goals – (1) to address the rise of indecent materials on the Internet, which did not have comparable restrictions that existed in other mediums, such as radio and television, and (2) to provide a safe harbor in order to ensure that websites would not be liable for removing such content. In a landmark decision, the Supreme Court ruled that it placed “unacceptably heavy burden on protected speech,” so restrictions on indecency were struck down, but a broad severability provision in the overall legislation allowed what is now commonly referred to just as “Section 230” to stand separate from the bipartisan policy in which it was embedded. It is the safe harbor established by Section 230 that enables Internet platforms like Twitter to moderate

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<sup>33</sup> Daily Kos (February 26, 2016) “Did Twitter's Exec Censor #WhichHillary in advance of Key Primaries? Twitter users speak out” <https://www.dailykos.com/stories/2016/2/26/1491618/-Twitter-Exec-Censors-WhichHillary-in-advance-of-Sunday-Fundraiser-Key-Primaries>

<sup>34</sup> Boucher, Dave (October 10, 2017) “Twitter Reverses Course, Will Allow Marsha Blackburn Video to be Used in Advertisements <https://www.tennessean.com/story/news/politics/2017/10/10/twitter-reverses-course-allow-marsha-blackburn-video-used-advertisements/751971001/>

<sup>35</sup> Morton, Victor (August 5, 2018) “Candace Owens mimics N.Y. Times’ Sarah Jeong, gets suspended by Twitter” Washington Times <https://www.washingtontimes.com/news/2018/aug/5/candace-owens-mimics-sarah-jeong-gets-suspended-tw/>

<sup>36</sup> See Glaser, April (December 12, 2017) “Periscope Has a Minor Problem” Slate [http://www.slate.com/articles/technology/technology/2017/12/periscope\\_users\\_are\\_asking\\_young\\_girls\\_to\\_do\\_sexually\\_explicit\\_things\\_and.html](http://www.slate.com/articles/technology/technology/2017/12/periscope_users_are_asking_young_girls_to_do_sexually_explicit_things_and.html). See also Menegus, Bryan (December 15, 2017) “Users Looking for Child Pornography are Gathering on Periscope, Twitter’s Forgotten Video Service” Gizmodo <https://gizmodo.com/users-looking-for-child-pornography-are-gathering-on-pe-1821290878>.

content published online, without assuming the legal risks of a traditional publisher exercising editorial judgment. Thus, it has been widely credited in such terms as “the law that gave us the modern Internet”<sup>37</sup> or “the most important law protecting Internet speech.”<sup>38</sup>

The content moderation and free speech considerations of any era are shaped by the communications technologies and platforms widely used at the time. Section 230 was written during the nascent Internet age, when most websites still displayed static content, streaming video was not a standard feature, and Google was not yet founded; however, some websites featured user-generated content via forums designed to enable user interaction, or comment functions enabling an audience to interact with content creators.

While policymakers recognized the positive implications of this development in terms of providing revolutionary opportunities for free expression and interaction, there were already apparent parallels between a website’s “publication” of user-generated content and the publication of content by traditional media outlets. Along with these parallels ran the possibility that an Internet platform could be held liable for the content its users posted, under the same statutory, regulatory, or common law theories that apply to any other publisher. These traditional claims include such concepts as copyright infringement, libel, defamation, plagiarism, invasion of privacy, infringement of publicity rights, misappropriation of trademark, misappropriation of property rights, and personal injury. Traditional media outlets and their authors or content providers must balance and apportion these risks through contract, and often carry publishers liability insurance to hedge against the risk of lawsuits.

Content management practices of Internet platforms, from moderating a forum to exclude offensive, abusive, or off-topic content, to efforts to take down illegal content, strengthen the case for treating the platforms as publishers, as they arguably exercise editorial judgment in these cases. However, Congress recognized at the time that leaving Internet platforms open to the same liability as traditional publishers, as a practical matter, would quickly put an end to the interactive nature of the Internet, as it would create untenable risks for any platform hosting third party content. Moreover, Congress recognized the important distinction in the level of editorial control that could realistically be exercised by, for example, a newspaper choosing a few letters to the editor for publication, as opposed to an Internet message board hosting thousands of users posting unvetted content around the clock, from anywhere in the world. Although the Internet platforms of the time performed moderation functions to some extent, and Congress wanted to affirmatively encourage takedown of obscene, pirated, or otherwise criminal content, the platforms were in large part viewed as intermediaries rather than as exercising editorial judgment regarding all content published on their websites.

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<sup>37</sup> Khana, Derek (September 12, 2013) “The Law That Gave Us the Modern Internet – and the Campaign to Kill It” The Atlantic <https://www.theatlantic.com/business/archive/2013/09/the-law-that-gave-us-the-modern-internet-and-the-campaign-to-kill-it/279588/>. See also Fitzgerald, Michael (July 8, 2018) “The Court Case That Enabled Today’s Toxic Internet” Wired <https://www.wired.com/story/the-court-case-that-enabled-todays-toxic-internet/>. See also Selyukh, Alina (March 21, 2018) “Section 230: A Key Legal Shield For Facebook, Google Is About to Change” NPR <https://www.npr.org/sections/alltechconsidered/2018/03/21/591622450/section-230-a-key-legal-shield-for-facebook-google-is-about-to-change>

<sup>38</sup> Electronic Frontier Foundation infographic “CDA 230: The Most Important Law Protecting Internet Speech” <https://www.eff.org/issues/cda230/infographic>



These considerations were ultimately balanced in Section 230, which created a safe harbor for Internet platforms to moderate content without exposure to the full gamut of risks undertaken by traditional publishers, while at the same time leaving intact their potential exposure under criminal law, intellectual property law, state law consistent with Section 230, and the Electronic Communications Privacy Act of 1986. Section 230 *permits* a broad range of content moderation practices done in good faith to restrict availability of content that either the provider or the user considers to be offensive, “whether or not such material is constitutionally protected”<sup>39</sup> while also leaving in place any *requirements* under federal or state law to take down certain kinds of illegal content, all while ensuring that none of these content moderation practices would lead to an Internet platform being treated as a publisher, with the untenable risk that would imply when managing content provided by so many users at once. Hence Section 230 preserved the Internet platforms of the time and opened the door to further innovation including social media as we know it today, all under the overall light-touch framework in which the Internet had developed and flourished.

The importance of Section 230 as the legislative foundation of the modern Internet has been widely recognized and celebrated.<sup>40</sup> For example, Professor Eric Goldman recently testified before the Subcommittee on Communications and Technology that “Section 230 ranks as one of Congress’ most important policy achievements in the past quarter-century. Section 230 deeply touches each of our lives by enabling the Internet services we rely upon every waking hour.”<sup>41</sup>

### **Evolution of Internet Platforms Following Enactment of Section 230**

The range of services and content available on the Internet has changed significantly since Section 230 was enacted, and the size, scale, and influence of Internet platforms has grown and matured. Though they may have once served mostly as third-party intermediaries, major Internet platforms no longer act as simple “pass-throughs.” These platforms are now directly competing with, and in some cases far surpassing, traditional media as sources of news and entertainment for users, and in terms of advertising revenue.<sup>42</sup> They are partnering with various content providers and taking a more active role in promoting or deprioritizing certain content.<sup>43</sup> And as the influence of the few major platforms has grown exponentially, through widespread consumer adoption as well as acquisition of potential competitors, so has their importance to consumers and content publishers as critical platforms for free expression, the modern “public

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<sup>39</sup> § 230(c)(2)(A)

<sup>40</sup> Letter from Internet Association to Senators Portman and Blumenthal (August 2, 2017) <https://cdn1.internetassociation.org/wp-content/uploads/2017/08/S1693-Association-Letter-08-02-2017.pdf>

<sup>41</sup> See Testimony of Eric Goldman. Subcommittee on Communications and Technology Hearing entitled, “Latest Developments in Combating Online Sex Trafficking.” November 30, 2017. Available at: <https://docs.house.gov/meetings/IF/IF16/20171130/106657/HHRG-115-IF16-Wstate-GoldmanE-20171130-U51.pdf>

<sup>42</sup> See Moazed, Alex (June 25, 2018) “Twitter’s Comeback Shows the Path for Traditional Media Companies” Inc. <https://www.inc.com/alex-moazed/twitters-comeback-shows-how-traditional-media-companies-can-compete-with-google-facebook.html>

<sup>43</sup> “News Use Across Social Media Platforms 2017,” Elisa Shearer and Jeffrey Gottfried. Pew Research Center. (2017). Available at: [http://assets.pewresearch.org/wp-content/uploads/sites/13/2017/09/13163032/PJ\\_17.08.23\\_socialMediaUpdate\\_FINAL.pdf](http://assets.pewresearch.org/wp-content/uploads/sites/13/2017/09/13163032/PJ_17.08.23_socialMediaUpdate_FINAL.pdf)

square.”<sup>44</sup> Many users have developed expectations that the same constitutionally protected free speech Americans enjoy in the physical world should extend to the digital world as well.<sup>45</sup>

Furthermore, many users expect a high degree of control over the content they experience via features provided by the platforms, such as “following” another user’s account, or “muting” other users. Section 230 formed the basis of this expectation through its statement that it is U.S. policy to “encourage the development of technologies that maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services.”<sup>46</sup>

As such, there has been expanded focus on the “governors” of the modern public squares and how they are making and enforcing the “laws” that apply on their platforms. As online content moderation practices do not implicate actual government action, they are not governed by the First Amendment, and in fact Section 230 gives Internet platforms very broad discretion to ban, restrict, promote, or prioritize content, and the users generating that content, as they see fit, without being subject to restrictions on publishers.<sup>47</sup> Internet platforms use this discretion to set policies they believe are in the “public interest,” much like other regulators do.<sup>48</sup>

While Internet platforms continue efforts to take down the criminal content specified in Section 230, the statute’s permissive structure regarding moderation for other purposes has allowed Twitter and other Internet platforms to develop ever more sophisticated and opaque community standards and methods to enforce them. Content is sometimes filtered or prioritized using proprietary algorithms, or other intellectual property, that are not subject to transparency requirements and thus not well understood by the public. There are concerns about intentional or unintentional bias being built into these machine-based decision-makers during their development.<sup>49</sup> Moreover, many controversial decisions regarding content moderation are made not by algorithms, but by employees enforcing or developing internal guidelines, which may or may not be public. In the context of concerns about the diversity of the employees responsible for making these decisions, questions of bias, influence, and control are magnified. In light of these concerns, the Committee seeks a better understanding of who decides the appropriateness

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<sup>44</sup> “News Use Across Social Media Platforms 2017,” Elisa Shearer and Jeffrey Gottfried. Pew Research Center. (2017). Available at: [http://assets.pewresearch.org/wp-content/uploads/sites/13/2017/09/13163032/PJ\\_17.08.23\\_socialMediaUpdate\\_FINAL.pdf](http://assets.pewresearch.org/wp-content/uploads/sites/13/2017/09/13163032/PJ_17.08.23_socialMediaUpdate_FINAL.pdf)

<sup>45</sup> Kate Klonick, “The New Governors: The People, Rules, and Processes Governing Online Speech.” Harvard Law Review, April 2018. At 1621. Available at: [https://harvardlawreview.org/wp-content/uploads/2018/04/1598-1670\\_Online.pdf](https://harvardlawreview.org/wp-content/uploads/2018/04/1598-1670_Online.pdf). “A common theme exists in all three of these platforms’ histories: American lawyers trained and acculturated in American free speech norms and First Amendment law oversaw the development of company content-moderation policy. Though they might not have “directly imported First Amendment doctrine,” the normative background in free speech had a direct impact on how they structured their policies.”

<sup>46</sup> § 230(b)(3)

<sup>47</sup> *Supra*, Note 44 at 1598-1670.

<sup>48</sup> *Id.*

<sup>49</sup> An, Jisun & Cha, Meeyoung & Gummadi, Krishna P. & Crowcroft, Jon & Quercia, Daniele. (2018). Visualizing Media Bias through Twitter. Available at: [https://www.researchgate.net/publication/268407361\\_Visualizing\\_Media\\_Bias\\_through\\_Twitter](https://www.researchgate.net/publication/268407361_Visualizing_Media_Bias_through_Twitter)



and priority of content on Twitter’s platform, how those decisions are being made and enforced, and what the impacts of those decision are on various types of Twitter users.

Widespread discontent with Internet platforms’ efforts to eliminate sex trafficking content recently led to the first-ever successful attempt to amend Section 230, through the work of this Committee. On November 30, 2017, the Subcommittee on Communications and Technology held a legislative hearing<sup>50</sup> on H.R. 1865, the Allow States and Victims to Fight Online Sex-Trafficking Act (FOSTA) of 2017, which was recently enacted into law.<sup>51</sup> Due to the safe harbor protections provided by Section 230, it was difficult to hold Internet platforms criminally (at the state level) and civilly liable for sex trafficking that was knowingly and willingly facilitated on their platforms. FOSTA amended Section 230 to provide for a narrow exception to this safe harbor to hold Internet platforms accountable—only for sex trafficking.

### **Federal Trade Commission**

While Section 230 protects websites that allow users to post content, and as private entities websites are generally free to regulate that content, corporations are expected to act consistently with any formal policies regarding the use of the service. The Federal Trade Commission Act gives the Federal Trade Commission (“FTC”) authority to prevent “unfair or deceptive acts or practices.”<sup>52</sup> The FTC is the primary enforcer of online consumer privacy and data security and has brought numerous cases against online services.

For example, the FTC brought an action against an internet service for placing an advertising tracking cookie on the users of a certain web browser despite having previously warranted that users of the service would be automatically opted out of such tracking.<sup>53</sup> The FTC alleged the defendant’s misrepresentations violated a prior settlement with the agency, which barred the defendant from misrepresenting the extent to which consumers could exercise control over information collected.<sup>54</sup> Under a 2012 settlement, the defendant agreed to pay a \$22.5 million civil penalty and to maintain systems to expire the cookies it placed contrary to its representations to consumers.<sup>55</sup> Also, the FTC brought an action against a website for misrepresenting the purposes for which it was collecting identifying information of users;<sup>56</sup> against a social media website for representing to users that they could keep information posted

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<sup>50</sup> Hearing entitled, “Latest Developments in Combating Online Sex Trafficking,” November 30, 2018. Available at: <https://energycommerce.house.gov/hearings/latest-developments-combating-online-sex-trafficking/>

<sup>51</sup> See, [https://www.washingtonpost.com/news/true-crime/wp/2018/04/11/trump-signs-fosta-bill-targeting-online-sex-trafficking-enables-states-and-victims-to-pursue-websites/?utm\\_term=.39fad9e9ea70](https://www.washingtonpost.com/news/true-crime/wp/2018/04/11/trump-signs-fosta-bill-targeting-online-sex-trafficking-enables-states-and-victims-to-pursue-websites/?utm_term=.39fad9e9ea70)

<sup>52</sup> 15 U.S.C. §45(a)

<sup>53</sup> *United States of America v. Google, Inc.* (No. CV 12-04177 SI (N.D. Cal. Nov. 16, 2012))  
<https://www.ftc.gov/sites/default/files/documents/cases/2012/11/121120googleorder.pdf>

<sup>54</sup> <https://www.ftc.gov/news-events/press-releases/2012/08/google-will-pay-225-million-settle-ftc-charges-it-misrepresented>

<sup>55</sup> <https://www.ftc.gov/news-events/press-releases/2012/11/statement-ftc-bureau-consumer-protection-director-david-vladeck>

<sup>56</sup> *In the Matter of GEOCITIES, a corporation* (DOCKET NO. C-3850 (February 9, 1999))  
[https://www.ftc.gov/sites/default/files/documents/cases/1999/02/9823015.do .htm](https://www.ftc.gov/sites/default/files/documents/cases/1999/02/9823015.do.htm)

on the site private, when in fact that information was allowed to be shared and made public;<sup>57</sup> and reached settlements with several online services which unlawfully billed parents for millions of dollars in children's unauthorized in-app charges.<sup>58</sup>

#### IV. ISSUES

The following issues may be examined at the hearing:

- How Twitter monitors user accounts for compliance with the Twitter User Agreement and Twitter Rules.
- How the company seeks to ensure that it does not “stifle freedom of expression and open dialogue” for views that might be unpopular with its owners or employees.
- How Twitter blocks, deprioritizes, or promotes certain speech or content through the use of its algorithms or any other means.
- What distinctions and similarities exist between Twitter and traditional media as sources of consumer news and entertainment, as advertising platforms, and as content editors.
- Whether Twitter is making appropriate use of its broad editorial discretion provided under Section 230 of the Communications Decency Act of 1996.
- Whether further changes to Section 230 are warranted, given the maturation of Internet platforms like Twitter, in order to encourage transparency and accountability.

#### V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Melissa Froelich, Jennifer Barblan, Robin Colwell, Tim Kurth, or Gregory Zerzan of the Committee staff at (202) 225-2927.

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<sup>57</sup> *In the Matter of FACEBOOK, INC., a corporation*, (DOCKET NO. C-4365 (July 27, 2012)) <https://www.ftc.gov/sites/default/files/documents/cases/2012/08/120810facebookdo.pdf>; see also <https://www.ftc.gov/news-events/press-releases/2012/08/ftc-approves-final-settlement-facebook>; <https://www.ftc.gov/news-events/press-releases/2011/11/facebook-settles-ftc-charges-it-deceived-consumers-failing-keep>;

<sup>58</sup> *In the Matter of GOOGLE INC., a corporation* (DOCKET NO. C-4499 (December 2, 2014)) <https://www.ftc.gov/system/files/documents/cases/141205googleplaydo.pdf>; *In the Matter of APPLE INC., a corporation* (DOCKET NO. C-4444 (March 25, 2014)); <https://www.ftc.gov/system/files/documents/cases/140327appledo.pdf>; see also <https://www.ftc.gov/news-events/press-releases/2014/07/ftc-alleges-amazon-unlawfully-billed-parents-millions-dollars>.