

Section 230 and the International Law of Facebook

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Introduction

In the argot of international lawyers, Section 230 of the Communications Act of 1934¹ is, technically, municipal law. But, despite its local origins, Section 230 serves as a key architectural norm of the global internet: internet service providers are not typically responsible for the speech of their users. Given that this model of internet regulation is under attack worldwide, for either promoting too much free expression² or too much censorship by the

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¹ This provision, passed as part of the Communications Decency Act, which was itself Title V of the Telecommunications Act of 1996, amended the Communications Act of 1934, and is codified at 47 U.S.C. § 230. See Blake Reid, *Section 230 of . . . what?*, BLAKE.E.REID (Sept. 4, 2020), <https://blakereid.org/section-230-of-what/>.

² See, e.g., Danielle Keats Citron & Mary Anne Franks, *The Internet as a Speech Machine and Other Myths Confounding Section 230 Reform*, U. CHI. LEGAL F. 45, 60 (2020).

platforms,³ it is useful to understand the role Section 230 plays in global speech today.

How could a mere municipal law have such global impact? Section 230 underpins what we might describe as the International Law of Facebook—the global community guidelines written and enforced by internet platforms, largely allowing these platforms to regulate the speech on their platforms.⁴ I use Facebook as a metonym for the larger group of global internet companies. I could as easily speak of the Law of Google, the Law of Flickr, the Law of Wikipedia, or even the Law of Tinder, each of which offer transnational platforms on which others speak. Section 230 offered the legal background against which Facebook and its peers wrote and enforced those rules, taking down, leaving up, monetizing, demonetizing, and promoting information, often by automated means, all without fear of liability back home. Section 230, I argue, made the U.S. a safe home base from which to offer a global speech platform. Section 230 immunizes platforms both for taking down material they disapprove of, and also for leaving up other material.

³ Then-President Donald Trump even signed an Executive Order seeking Federal Communications Commission rulemaking to limit Section 230 immunity by effectively eliminating the broad immunity grant in Section 230(c)(1). Preventing Online Censorship, Exec. Order No. 13,925, 85 Fed. Reg. 34,079 (May 28, 2020). President Joseph Biden revoked this executive order. Revocation of Certain Presidential Actions and Technical Amendment, Exec. Order No. 14,029, 86 Fed. Reg. 27,025 (May 14, 2021). Various proposals in Congress seek to amend Section 230. *See, e.g.*, Platform Accountability and Transparency Act, S. 4602, 167th Cong. (2021); Protecting Americans from Dangerous Algorithms Act, H.R. 2154, H.R. 8636, 116th Cong. (2021); A Bill to Repeal Section 230 of the Communications Act of 1934, S. 5020, 116th Cong. (2020); Accountability for Online Firearms Marketplaces Act of 2021, S. 2725, 117th Cong. (2021); Health Misinformation Act of 2021, S. 2448, 117th Cong. (2021); Preserving Political Speech Online Act, S. 2338, 117th Cong. (2021); Don't Push my Buttons Act, S. 2335, 117th Cong. (2021); 21st Century FREE Speech Act, S. 1384, 117th Cong. (2021); Platform Accountability and Consumer Transparency Act (PACT Act), S. 797, 117th Cong. (2021); Safeguarding Against Fraud, Exploitation, Threats, Extremism, and Consumer Harms Act (SAFE TECH Act), S. 299, 117th Cong. (2021); See Something, Say Something Online Act, S. 27, 117th Cong. (2021).

⁴ Ash Bhagwat uses the phrase the “law of Facebook” to refer to the law regulating Facebook, while I deploy it here to refer to the “law” promulgated and enforced by Facebook. Ashutosh Bhagwat, *The Law of Facebook*, 54 U.C. DAVIS L. REV. 2353 (2021).

Even if the platforms might be sued abroad, they could be confident that those suits could not follow them home.

In the first Supreme Court case on internet law, Justice John Paul Stevens, writing for the Court, highlighted the internet's role in "foster[ing] an exchange of information or opinion on a particular topic running the gamut from, say, . . . Balkan politics to AIDS prevention to the Chicago Bulls."⁵ Section 230, the part of the Communications Decency Act that survived that decision, makes good on that promise of fostering discussions on global topics. A shield against lawsuits, it protects internet service providers and users from being held civilly liable in U.S. courts, whether the actions involve foreign law, foreign plaintiffs, foreign defendants, foreign events, or foreign judgments—as this essay will show. In this way, it encourages wide discussion of global events.

Section 230 thus buttresses what Molly Land calls the "international law of the internet"—Article 19 of the Universal Declaration of Human Rights, which affirms a right to receive and impart information regardless of frontiers.⁶ By protecting internet platforms for being held liable for the speech on their sites or their moderation of that speech, Section 230 simultaneously supports both free expression across the world and content moderation by the platforms.

Should we cheer this globalization for promoting discussion on issues across the world or denounce it as a new legal imperialism? Harold Koh describes American-style free speech norms as part of our "distinctive rights culture."⁷ Does exporting that distinctive culture, now via the practices of our internet platforms, represent an impermissible violation of Westphalian territorial sovereignty?

This Essay sheds light on regulatory globalization in the internet era. First, it reveals the significance of a U.S. statute to discussions of global issues. It shows that discussions of global

⁵ *Reno v. Am. C.L. Union*, 521 U.S. 844, 851 (1997).

⁶ Molly Land, *Toward an International Law of the Internet*, 54 HARV. INT'L L.J. 393 (2013).

⁷ Harold Hongju Koh, *On American Exceptionalism*, 55 STAN. L. REV. 1479, 1483 (2003).

issues are at stake when legislators propose to limit or substantially narrow Section 230 protections. A retreat from Section 230's broad immunity will strengthen the hand of those around the world who seek to impose liability for either permitting speech or curbing speech; it will enable lawsuits in the U.S. arising out of discussions of global issues; and it will lead to heavy-handed content moderation of global issues to avoid any risk of being held liable. Second, the study reveals additional channels for regulatory globalization, building on the de facto Brussels Effect, where companies comport themselves to EU rules even outside the EU because of economies of mass production.⁸ We see at work a kind of "Washington Effect" of companies relying upon a national legal framework to develop practices that they deploy worldwide.

My argument proceeds as follows. Part I shows how Section 230 established the legal foundation upon which speech platforms built their global content moderation practices. Part II shows Section 230's normative influence on foreign intermediary liability laws and also on some regional trade agreements. Part III examines all of the transnational cases involving Section 230 that I can identify, revealing that *Section 230 is a successful defense in all of these cases, but one*. This case-by-case examination reveals the substantial emerging role of Section 230 in transnational civil litigation involving speech. Part IV turns to the normative question of whether Section 230's global role is good or bad, concluding that its role in promoting free expression across frontiers (both in the form of protection from liability for third-party speech and generally in the form of protection for editorial discretion about what to publish) justify its continuation. However, global speech platforms must center their effects outside Western nations in the content and execution of their trust and safety policies.

I. Underpinning the International Law of Facebook

The international law of Facebook, which governs this speech platform for its nearly three billion users, can be found in its "Community Standards."⁹ Facebook writes and rewrites that law,

⁸ ANU BRADFORD, *THE BRUSSELS EFFECT: HOW THE EUROPEAN UNION RULES THE WORLD 2* (2020); Anupam Chander, Margot Kaminski & William McGeeveran, *Catalyzing Privacy*, 105 MINN. L. REV. 1733, 1742, 1744 (2021).

⁹ Meta Reports Fourth Quarter and Full Year 2021 Results, PRNEWswire (Feb. 2, 2022), <https://www.prnewswire.com/news-releases/meta-reports-fourth->

and also enforces that law as it sees fit.¹⁰ That process is a product of Section 230. Indeed, the community guidelines that serve as the Law of Google, the Law of Reddit, the Law of Discord, or even the Law of Wikipedia find their legal foundation in Section 230. It is Section 230 that gives legal support for such content moderation, granting the internet services immunity for setting and enforcing these rules.¹¹ Section 230 makes it clear that it is the internet service provider—rather than a politician, judge, or bureaucrat—who decides what is “objectionable.”¹² These are what Eric Goldman and Jess Miers call the “house rules.”¹³

Many of the world’s largest speech platforms are based in the United States.¹⁴ Facebook, Google, and Twitter, not to mention Discord, Pinterest, Reddit, and Wikipedia, use a home base in the United States from which to go global.¹⁵ Because they had to first

[quarter-and-full-year-2021-results-301474305.html](https://www.facebook.com/standards) (reporting 2.9 billion monthly average users); Facebook Community Standard, Transparency Center, <https://transparency.fb.com/policies/community-standards/> (last visited Aug. 23, 2022).

¹⁰ I use “law” here in the sense of the Silicon Valley “code” that Larry Lessig identified. Silicon Valley “code regulates,” Lessig observed. LAWRENCE LESSIG, CODE AND OTHER LAWS OF CYBERSPACE 6 (1999). Here, that regulation would consist in banning, demonetizing, amplifying, or labeling particular content or particular users using the tools offered by the platform’s code.

¹¹ Courts have interpreted both Section 230(c)(1) and Section 230(c)(2) as protecting decisions to take down user content. *See* Barnes v. Yahoo, Inc., 570 F.3d 1096, 1105 (2009); VALERIE C. BRANNON & ERIC N. HOLMES, CONG. RSCH. SERV., R46751, SECTION 230: AN OVERVIEW i (2021) (“[C]ourts have interpreted Section 230(c)(1) to apply to both distribution and takedown decisions.”).

¹² Section 230(c)(2) provides that interactive computer services shall not be liable for “any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.”

¹³ Eric Goldman & Jess Miers, *Online Account Terminations/Content Removals and the Benefits of Internet Services Enforcing Their House Rules*, 1 J. FREE SPEECH L. 191, 195 (2021) (“We refer to an Internet service’s policies restricting users’ legal but objectionable activity or content as the service’s ‘house rules.’”).

¹⁴ Anupam Chander, *Law and the Geography of Cyberspace*, 6 WORLD INTELL. PROP. ORG. J. 99, 99 (2014).

¹⁵ Kate Klonick, *The New Governors: The People, Rules, and Processes Governing Online Speech*, 131 HARV. L. REV. 1598, 1616-17 (2018) (“[O]ver the last fifteen years, three American companies—YouTube, Facebook, and

configure their operations to conform to local law, this means that the laws of the United States played a critical role in shaping the approaches that these platforms eventually took in their global operations. Kate Klonick argues that “American free speech norms and concerns over censorship became instilled in the speech policies of these companies.”¹⁶

At the same time, because they are “[b]ased in the United States, the major social media platforms operate within a highly permissive legal environment regarding content moderation,” Rebecca Hamilton observes.¹⁷ She explains that, “As a strictly legal matter, there is no reason for the platforms to have developed the elaborate content moderations systems they currently run.”¹⁸ But they go on to do so at least in part because of business imperative: “[t]o keep users online—and thus advertising revenue flowing—platforms had to develop standards for what would and would not be acceptable.”¹⁹ Klonick argues that “platforms moderate content because of a foundation in American free speech norms, corporate responsibility, and the economic necessity of creating an environment that reflects the expectations of their users.”²⁰ These standards then help constitute what Klonick calls the “New Governors in the digital era.”²¹

Twitter—have established themselves as dominant platforms in global content sharing and online speech.”). Not all speech platforms, of course, are based in the United States. Chinese speech platforms, for example, generally adopt a content review focused on ensuring that they follow official policy and guiding public opinion. See, e.g., Rebecca MacKinnon, *China’s Censorship 2.0: How Companies Censor Bloggers*, FIRST MONDAY (Feb. 2, 2009), <https://journals.uic.edu/ojs/index.php/fm/article/view/2378/2089>; MARGARET E. ROBERTS, *CENSORED: DISTRACTION AND DIVERSION INSIDE CHINA’S GREAT FIREWALL* (2018).

¹⁶ Klonick, *supra* note 15, at 1625.

¹⁷ Rebecca J. Hamilton, *Governing the Global Public Square*, 62 HARV. INT’L L.J. 117, 132 (2021).

¹⁸ *Id.*

¹⁹ *Id.* at 133. The community guidelines are also a direct reflection of the values of the leadership of the companies.

²⁰ Klonick, *supra* note 15, at 1602.

²¹ *Id.* at 1663 (“The private platforms that created and control that infrastructure are the New Governors in the digital era.”).

Elsewhere, I argue that Section 230 was a key architectural feature that made possible the business model of social media today.²² By protecting these platforms at home, Section 230 encourages these platforms to allow users to post information without worry about civil liability, and to refuse to post information similarly without worry for civil liability.²³ Section 230 encouraged the “community guidelines” approach to content moderation because it protects internet providers as they restrict access to “objectionable” material, even if that material is constitutionally protected speech. Section 230 enables these companies, when they wish, to revise their guidelines to deal with the dazzling array of misuses that users dream up. Every major platform has accordingly established a set of community guidelines, typically alongside a trust and safety team that reviews complaints and anticipates concerns over user-generated content.

TripAdvisor, a website that allows people to review sites across the world, reports that it relies on Section 230 to respond to cease and desist claims from those who are subject to negative reviews, not just in the United States, but also across the world:

When a site operates at the scale we do (over 250 posts per minute), cease and desist letters arrive from across the globe every day, demanding we remove content. We cite Section 230 in responding to those letters—including to international challengers—to clarify that as a US-based platform governed by US laws, we are able to host reviews without undertaking the impossible task of fact

²² Anupam Chander, *How Law Made Silicon Valley*, 63 EMORY L.J. 639, 657 (2014) (characterizing Section 230 as a “lifeline to Internet enterprises”); *id.* at 668 (“By the end of the twentieth century, laws conducive to the business model of Web 2.0 were in place. Companies would offer platforms on which users could provide content . . . then monetize these large numbers of users by exploiting personal information about them for marketing. And the law would abide this.”).

²³ *Id.* at 654-655 (“Perhaps every major Internet enterprise has relied on the statute to defend itself over the years.”). This was a result of both Congress and the courts—and their interactions with each other. Neither Congress nor the Courts were consistently single-minded in their promotion of Internet enterprise, yet their interaction resulted in precisely this. Congress overruled any court that might have sought to hold intermediaries liable for user-generated content (other than for intellectual property-based claims, an area we turn to next). Meanwhile, the Courts overturned congressional efforts to require Internet enterprises to censor speech widely. *Id.* at 657.

checking each of them. Section 230 provides powerful protections for our business to operate and provide valuable services both domestically and internationally.²⁴

For TripAdvisor then, Section 230 proves important to defend itself from demands that it remove content, whether those letters come from Kansas or Kenya. The Kenyan may still sue in Kenya, of course—but the American approach may have normative salience even there. TripAdvisor’s U.S. law defense may or may not prove successful in foreign courts. That depends on how the foreign jurisdiction deals with such issues. When a UK distance-learning company sued an Oregon-based bulletin board service, as well as Google, for alleged defamation, the judge cited the fact that any adverse judgment would likely be unenforceable in the United States due to Section 230.²⁵ The court did not rely on Section 230 when it dismissed the claim against Google, however.

In sum, the practices created in a U.S. environment nurtured by Section 230 are then exported by default to the world, modified only as necessary in the face of enforcement efforts by foreign governments or negative publicity. As Michael Karanicolas notes, “tech platforms still overwhelmingly calibrate their global moderation structures based on the American market.”²⁶ This does not mean that these companies necessarily refuse direct orders from foreign governments or courts, but it does mean that in the absence of such orders or law that is routinely enforced, the Section 230 approach stands as the global default.

II. Exporting Norms

We now turn to two mechanisms for the globalization of Section 230—the adoption of Section 230-like norms by other governments and the inclusion of Section 230-like immunities in regional trade agreements.

²⁴ TripAdvisor, Reply Comment on NTIA Petition for Rulemaking, Docket No. RM-11862 (Sept. 17, 2020), <https://perma.cc/33CP-JY4U>.

²⁵ *Metropolitan International Schools Ltd v. Designtecnica Corp* [2011] 1 WLR 1743 (Eng.).

²⁶ Tweet from Yale ISP-WIII, Twitter (Nov. 14, 2020), https://twitter.com/YaleISP_WIII/status/1327647963167006722.

A. *Influencing Foreign Law*

Section 230 has proven influential as other countries have developed their internet law. In Europe, Germany adopted the Teleservices Act of 1997, a statute that Christopher Marsden describes as offering “a similar limited liability regime to that in the US.”²⁷ That same year, a European Union Ministers meeting in Bonn in July 1997 adopted a ministerial declaration that supported fairly broad immunities for internet intermediaries: “intermediaries like network operators and access providers should, in general, not be responsible for content.”²⁸ Thus, we see that, a year after Section 230 was enacted, EU ministers adopted its fundamental principle: ensuring that liability laws did not make internet companies liable for content. Indeed, the European Union’s E-Commerce Directive,²⁹ which established its intermediary liability rules across the region in 2000, was “directly traceable” to the German Teleservices Act of 1997.³⁰

That does not mean that the EU’s approach offered as fulsome an immunity as Section 230. Joan Barata reports, for example, that “EU law currently encompasses an extremely limited and vague version of the Good Samaritan principle.”³¹ The immunity provisions in Section 230 fall under the heading of “Protection for ‘Good Samaritan’ blocking and screening of offensive materials,” though Good Samaritan concerns are not necessary to avail oneself of the immunity. While EU law is more speech-restrictive in certain respects, platform immunity is still the guiding norm.

²⁷ Christopher T. Marsden, *The Regulated End of Internet Law, and the Return to Computer and Information Law?*, in AFTER THE DIGITAL TORNADO: NETWORKS, ALGORITHMS, HUMANITY 35, 45 (Kevin Werbach ed., 2020).

²⁸ *Global Information Networks: Realizing the Potential*, EUROPEAN UNION MINISTERS (July 6-8, 1997), http://web.mclink.it/MC8216/netmark/attach/bonn_en.htm.

²⁹ Directive 2000/31, of the European Parliament and of the Council of 8 June 2000 on Certain Legal Aspects of Information Society Services, in Particular Electronic Commerce, in the Internal Market, 2000 O.J. (L 178) 1, 13.

³⁰ Marsden, *supra* note 27, at 46.

³¹ JOAN BARATA, POSITIVE INTENT PROTECTIONS: INCORPORATING A GOOD SAMARITAN PRINCIPLE IN THE EU DIGITAL SERVICES ACT 13 (2020), <https://cdt.org/insights/positive-intent-protections-incorporating-a-good-samaritan-principle-in-the-eu-digital-services-act/>.

B. Becoming Literal International Law

Section 230 is now literally international law because its core norms have been incorporated into international trade treaties. Article 19.17 of the United States-Mexico-Canada Agreement provides:

[N]o Party shall adopt or maintain measures that treat a supplier or user of an interactive computer service as an information content provider in determining liability for harms related to information stored, processed, transmitted, distributed, or made available by the service, except to the extent the supplier or user has, in whole or in part, created, or developed the information.³²

The U.S.-Japan Digital Trade Agreement adopts a nearly-identical provision in Article 18.³³

In 2019, the United States had announced that it was seeking to include Section 230-type protections in negotiating trade agreements with the United Kingdom and Kenya.³⁴ U.S. government enthusiasm for Section 230 has since waned,³⁵ so it is unclear whether this remains a negotiating objective today.

³² Agreement between the United States of America, the United Mexican States, and Canada, July 1, 2020, Office of the U.S. Trade Representative, Art. 19.17 (July 1, 2020), <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>.

³³ Digital Trade Agreement, U.S.-Japan, Oct. 7, 2019, OFFICE OF THE U.S. TRADE REPRESENTATIVE (Oct. 7, 2019), https://ustr.gov/sites/default/files/files/agreements/japan/Agreement_between_the_United_States_and_Japan_concerning_Digital_Trade.pdf.

³⁴ *United States-United Kingdom Negotiations: Summary of Specific Negotiating Objectives*, OFFICE OF THE U.S. TRADE REPRESENTATIVE (Feb. 2019) https://ustr.gov/sites/default/files/Summary_of_U.S.-UK_Negotiating_Objectives.pdf; *United States-Kenya Negotiations: Summary of Specific Negotiating Objectives*, OFFICE OF THE US TRADE REPRESENTATIVE (May 2020) https://ustr.gov/sites/default/files/Summary_of_U.S.-Kenya_Negotiating_Objectives.pdf.

³⁵ See *supra* note 3.

III. Making the US a Safe Home Base for Global Speech

Section 230 serves as a shield in U.S. courts against claims brought based on events or controversies abroad. By protecting them at home, Section 230 gives these companies a safe harbor from which to offer their services across the world. This protection is even more crucial because the United States is famously litigious, at least in part because the law is generally more plaintiff-friendly, permitting class actions, providing extensive discovery, permitting larger damages awards, and not generally imposing obligations on the loser to pay the winner's attorney's fees.³⁶

Remarkably, in all of the cases that I have been able to discover involving foreign parties or events, with one exception, defendants successfully invoked Section 230, except in cases where the courts did not reach that issue because the defendant won on other grounds. Many of these claims, which often allege a connection between social media activity and a harm that the plaintiff suffered, would likely falter on the merits. As one court noted in a claim against Twitter, the causal connection between the internet platform's content moderation actions and the harm suffered is often "tenuous at best."³⁷ But Section 230 allows a platform to defend against these claims at an early stage, avoiding costly litigation.³⁸ As we shall see,

³⁶ Pamela K. Bookman, *Litigation Isolationism*, 67 STAN. L. REV. 1081, 1090-91 (2015). A recent case shows the challenge of bringing class actions in other jurisdictions. In *Lloyd v. Google*, the UK Supreme Court unanimously rejected the attempt to bring a proposed privacy class action on behalf of 5.4 million iPhone users, ruling that each claimant had to demonstrate that they suffered material harm as a result of the privacy breach. David Barker, *Lloyd v. Google: Supreme Court unanimously rejects claimant's representative action*, PINSENT MASONS (Nov. 10, 2021), <https://www.pinsentmasons.com/out-law/analysis/lloyd-v-google-supreme-court-representative-action>. The claim was "funded by Therium Litigation Funding IC, a commercial litigation funder." Bill Goodwin, *Lloyd v Google Supreme Court verdict brings end to privacy class actions against big tech in UK*, COMPUTER WEEKLY (Nov. 11, 2021) <https://www.computerweekly.com/news/252509359/Lloyd-v-Google-Supreme-Court-verdict-brings-end-to-privacy-class-actions-against-big-tech-in-UK>.

³⁷ *Fields v. Twitter, Inc.*, 200 F. Supp. 3d 964, 974 (N.D. Cal. 2016).

³⁸ Eric Goldman, *Why Section 230 Is Better Than the First Amendment*, 95 NOTRE DAME L. REV. REFLECTION 33, 39 (2019) (arguing that Section 230 enables early dismissals).

these cases involve stay-ups, take-downs, as well as other content remedies such as demonetization.³⁹

Take an example illustrating Section 230's global role. In 2021, Facebook, Twitter, and YouTube all removed material posted by Brazilian President Jair Bolsonaro under their Covid 19 disinformation policy. President Bolsonaro responded with a provisional decree barring the "arbitrary removal" of social media accounts or content, and instead requiring a court order before any takedowns.⁴⁰ Many worried that the decree would let fake news circulate freely on social networks ahead of next year's election "let fake news circulate freely on social networks ahead of next year's election."⁴¹ The Brazilian technology law scholar Carlos Affonso de Souza worried that the decree would create a "Ministry of Lies" with broad powers to punish internet companies that curtail false speech.⁴² The decree was quickly blocked by both the Brazilian Senate and, an hour later, the Supreme Court, due to concerns about the constitutionality of the provisional measure.⁴³ Section 230 provides the background U.S. legal protection from liability for removing what the platforms believe to be disinformation. The platforms formulated their content moderation approach against this background, an approach later vindicated in the Brazilian case.

While the First Amendment might have offered a backstop defense in some of these cases, Section 230 offered "substantive and procedural benefits beyond the First Amendment's protections," as Eric Goldman argues, including the ability for a court to dismiss a

³⁹ Eric Goldman, *Content Moderation Remedies*, 28 MICH. TECH. L. REV. 1, 23-39 (2021).

⁴⁰ *Brazil President Jair Bolsonaro signs decree changing social media regulations*, REUTERS (Sep. 6, 2021), <https://www.reuters.com/world/americas/brazil-president-jair-bolsonaro-signs-decree-changing-social-media-regulations-2021-09-06/>.

⁴¹ Shobhan Saxena & Florencia Costa, *Brazil's Congress and Supreme Court Crush Bolsonaro's Plans to Rule With Fake News*, WIRE (Sep. 16, 2021), <https://thewire.in/world/brazil-congress-supreme-court-crush-bolsonaro-fake-news-plans>.

⁴² Carlos Affonso de Souza, *Inconstitucional, MP de Bolsonaro cria 'Ministério da Mentira.'* UOL, <https://www.uol.com.br/tilt/colunas/carlos-affonso-de-souza/2021/09/07/medida-provisoria-de-bolsonaro-sobre-redes-sociais-e-inconstitucional.amp.htm> (last visited Sep. 14, 2022).

⁴³ *Id.*

lawsuit without reference to the defendant's scienter and the likelihood that a Section 230 defense might be less costly to litigate than a First Amendment defense.⁴⁴

A. *Foreign Law Claims*

Plaintiffs have at times brought foreign claims in U.S. court, only to run aground when faced with Section 230. In *Cohen v. Facebook*, U.S. citizen plaintiffs who suffered from terrorist attacks in Israel sued Facebook for allegedly promoting terrorism by providing a platform allegedly used by terrorists to incite violence. The plaintiffs brought claims based in both US and Israeli law.⁴⁵ The Second Circuit dismissed the claims without reaching the question of whether Section 230 immunizes parties against foreign law claims, though the district court had concluded that it did “because there is no listed exception for foreign law claims” in Section 230.⁴⁶ Indeed, it would be unlikely for Congress to permit foreign law claims to go forward against internet services in U.S. courts when domestic law claims cannot. That would create a possible end-run around Section 230 protections in cases where foreign law might be applicable—which might involve much of the internet, given that it is global (though plaintiffs might face other hurdles, such as jurisdiction over the foreign law claims).

A new case currently before a federal court raises a similar issue. In 2021, the daughter of a Rohingya Muslim man tortured by the Myanmar military in 2012 brought a class action in the Northern District of California against Meta Platforms, Inc. alleging that the company had improperly designed its product and was negligent in failing to prevent the use of its platform to promote violence against her family and others. The complaint stemmed from the use of Facebook by the Myanmar military to stoke attacks against

⁴⁴ Goldman, *supra* note 39, at 40, 42.

⁴⁵ The case involved two sets of plaintiffs—U.S. citizen plaintiffs who are “victims of terrorist attacks in Israel” (the “Force Plaintiffs”) and roughly 20,000 Israeli citizen plaintiffs (the “Cohen Plaintiffs”) who are “presently threatened with imminent violent attacks that are planned, coordinated, directed, and/or incited by terrorist users of Facebook.” *Cohen v. Facebook, Inc.*, 252 F. Supp. 3d 140, 145, 146 (E.D.N.Y. 2017), *aff'd in part, dismissed in part sub nom. Force v. Facebook, Inc.*, 934 F.3d 53 (2d Cir. 2019).

⁴⁶ *Id.* at 160. The Second Circuit did not need to reach the issue because of a lack of federal jurisdiction over the plaintiffs' foreign law claims.

Rohingya Muslims, who were cast as foreign invaders in Myanmar.⁴⁷ Recognizing that such a claim would typically fail in U.S. courts because of Section 230, the plaintiff seeks to sidestep Section 230 by arguing that liability should be determined under Burmese law: “Burmese law does not immunize social media companies for their role in inciting violence and contributing to genocide.”⁴⁸ As mentioned above in regard to *Cohen v. Facebook*, which also involved a foreign plaintiff alleging harm abroad, federal courts have previously rejected attempts to sidestep section 230 by relying on foreign law.⁴⁹ As we will see, courts are inclined to regard section 230’s grant of immunity broadly enough to cover all such claims. Section 230’s broad immunity is unlikely to be defeated simply by relying on foreign law. A foreigner bringing claim for foreign harm cannot elude Section 230 by making a claim under foreign law.

In another case, a plaintiff argued that international law (not foreign law) superseded Section 230. There, a victim of child sexual trafficking in the United States sought to hold Village Voice Media Holdings, LLC and Backpage.com liable for advertisements allegedly about the child on the site posted by an adult. The plaintiff argued that a treaty, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, overrode Section 230. The court concluded that the treaty was not self-executing—that is, it did not establish a rule that could be directly enforced in domestic courts, and thus could not give plaintiff rights that superseded Section 230.⁵⁰

B. Foreign Plaintiffs

As we have seen, U.S. courts have invoked Section 230 when plaintiffs sought to hold Facebook, Google, and Twitter liable for terrorism abroad. Plaintiffs in those cases sought to tie internet platforms to the terrible violence they had experienced or worried

⁴⁷ Jenny Domino, *Crime as Cognitive Constraint: Facebook’s Role in Myanmar’s Incitement Landscape and the Promise of International Tort Liability*, 52 CASE W. RES. J. INT’L L. 143 (2020).

⁴⁸ Complaint, *Jane Doe v. Meta Platforms, Inc.* 2 (N.D. Cal., Dec. 6, 2021).

⁴⁹ See *supra* note 45 and accompanying text.

⁵⁰ *M.A. ex rel. P.K. v. Vill. Voice Media Holdings, LLC*, 809 F. Supp. 2d 1041, 1058 (E.D. Mo. 2011).

about experiencing, reasoning that these platforms had (allegedly) hosted and amplified content that stoked the violence.

The largest of these cases, *Cohen v. Facebook*, involved “roughly 20,000 Israeli citizens” and “victims, estates, and family members of victims of terrorist attacks in Israel” who sued Facebook, alleging that terrorists used its platform to incite violence. I discussed this case above because of the invocation of foreign law, but I return to this case here because of its foreign plaintiffs. The district court upheld Facebook’s Section 230 defense against the foreign plaintiffs. On appeal, consolidated with the case of *Force v. Facebook*, which involved domestic plaintiffs, the Second Circuit sided with Facebook, dismissing the case brought by the foreign plaintiffs on jurisdictional grounds, thus making the Section 230 defense unnecessary. But the Second Circuit relied on Section 230 to dismiss the domestic plaintiffs bringing similar claims against Facebook.

Section 230 also protected Facebook when it shuttered the account of a Russian corporation accused of promoting disinformation on behalf of the Russian Internet Agency in connection with the 2016 U.S. presidential election. The plaintiff was a “corporation organized and existing under the laws of the Russian Federation,” headquartered for a time in the same building as the Russian Internet Research Agency (IRA), and founded by a Russian who worked for the IRA.⁵¹ When Facebook acted, belatedly after the election, to shut down the Facebook page of the Russian corporation, the corporation sued in a federal district court in California, claiming that Facebook had violated its constitutional and statutory civil rights. Judge Lucy Koh upheld Facebook’s Section 230 defense, reasoning that the Russian plaintiffs sought to hold Facebook liable as a publisher because the decision not to publish was a quintessential publisher decision.⁵²

In *Igbonwa v. Facebook*, a Nigerian man living in Nigeria sued Facebook in the Northern District of California for defamation

⁵¹ Fed. Agency of News LLC v. Facebook, Inc., 395 F. Supp. 3d 1295, 1300 (N.D. Cal. 2019).

⁵² Id. at 1306 (“[R]emoving content is something publishers do, and to impose liability on the basis of such conduct necessarily involves treating the liable party as a publisher.” (quoting *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1103 (9th Cir. 2009))).

allegedly carried against him on the site. The federal district court barred the claims based on Section 230.⁵³

When a Greek plaintiff brought a defamation claim against unnamed John Does, it claimed that it did not sue these defendants' domain name registrar GoDaddy because Section 230 immunized GoDaddy from the lawsuit.

In *Bobolas v. Does 1-100*, a Greek plaintiff sued unnamed individuals for defamation, but also sought an injunction running against those individuals' domain name registrar, GoDaddy. The plaintiff argued that it could not name GoDaddy as a defendant because it could avail itself of Section 230 immunity. Instead, the plaintiff sought a temporary restraining order against GoDaddy as a non-party to the case. The court concluded that Section 230 did mean that GoDaddy could not be held liable for any defamation, but that Section 230 did not necessarily prevent an injunction against GoDaddy ordering GoDaddy not to allow defendants from posting other false statements about the plaintiff.⁵⁴ But the court concluded that it could not enjoin GoDaddy as a non-party in any case.

A new bill from Senators Mark Warner, Mazie Hirono and Amy Klobuchar would remove the Section 230 hurdle for certain suits alleging violations of international law by foreign plaintiffs in the future. Among the provisions in the SAFE TECH Act narrowing Section 230 immunity is a provision that would exempt suits brought under the Alien Tort Statute from Section 230 immunity.⁵⁵ Because Alien Tort Statute claims can only be brought by foreign plaintiffs, this bill would enable foreign plaintiffs to bring claims against interactive computer services even when U.S. residents could not.

C. Foreign Defendants

Section 230 is, like any defense, available to any party, whether foreign or domestic. I could not locate cases where Section 230 was

⁵³ *Igbonwa v. Facebook, Inc.*, No. 18-CV-02027-JCS, 2018 WL 4907632, at *1 (N.D. Cal. Oct. 9, 2018), *aff'd*, 786 F. App'x 104 (9th Cir. 2019).

⁵⁴ *Bobolas v. Does 1-100*, No. CV-10-2056-PHX-DGC, 2010 WL 3923880, at *2 (D. Ariz. Oct. 1, 2010).

⁵⁵ Safeguarding Against Fraud, Exploitation, Threats, Extremism, and Consumer Harms Act (SAFE TECH Act), S. 299, 117th Cong. (2021).

asserted by a foreign defendant. Plaintiffs face procedural hurdles such as service and personal jurisdiction in bringing claims against foreign defendants, though neither is by any means insurmountable.

A case that comes close to this category is *Mosha v. Yandex*, where the defendant was not itself foreign, but instead was the U.S.-based advertising subsidiary of the Russian search engine, Yandex.ru. In that case, the plaintiff brought suit against the U.S. subsidiary because the Russian search engine refused to de-index websites that allegedly contained defamatory information about him. The district court upheld Yandex Inc.'s Section 230 defense, reasoning that the plaintiff was seeking to hold an internet service provider (Yandex Inc.) liable for publishing activities of its sister company.⁵⁶

D. Foreign Events

As the above cases demonstrate, plaintiffs have sought to hold internet platforms liable for events abroad in numerous cases. The plaintiffs in these cases typically argue that the platforms' hosting and algorithmic amplification of content led to harm to the plaintiffs.

Plaintiffs in some of these cases have argued that Section 230 does not apply because the claims center on events abroad, relying on the presumption against extraterritoriality.⁵⁷ This canon of statutory interpretation is founded on the premise that "United States law governs domestically but does not rule the world."⁵⁸ In its current form, the presumption first asks whether the statute offers a "clear indication of geographic scope," and failing that, asks where the "focus" of the statute lies.⁵⁹ The plaintiffs in these cases argue that Section 230 does not specify that it must be applied extraterritorially, so the question then turns on "whether the object

⁵⁶ *Mosha v. Yandex Inc.*, No. 18 CIV. 5444 (ER), 2019 WL 5595037, at *1 (S.D.N.Y. Oct. 30, 2019).

⁵⁷ See, e.g., *Gonzalez v. Google LLC*, 2 F.4th 871, 887 (9th Cir. 2021).

⁵⁸ *RJR Nabisco, Inc. v. Eur. Cmty.*, 579 U.S. 325, 335 (2016) (quoting *Microsoft Corp. v. AT&T Corp.*, 550 U.S. 437, 454 (2007)).

⁵⁹ William S. Dodge, *The New Presumption Against Extraterritoriality*, 133 HARV. L. REV. 1582, 1585-86 (2020).

of the statute's 'focus' was found in the United States."⁶⁰ Given that the events underlying the lawsuit occurred abroad, the plaintiffs argue that the presumption against extraterritoriality applies, foreclosing the application of Section 230 to the lawsuit.

Notwithstanding its plausibility, courts have rejected this argument. Given that Section 230 does not specify that it should be applied extraterritorially, courts have examined the second step of the presumption against extraterritoriality framework—the focus. In *Cohen v. Facebook*, District Court Judge Nicholas G. Garaufis argued that Section 230 was focused on “providing immunity.”⁶¹ He continued, “In light of its focus on limiting civil liability, the court concludes that the relevant location is that where the grant of immunity is applied, i.e. the situs of the litigation.”⁶² On appeal, the Second Circuit concurred, noting that Section 230's “primary purpose is limiting civil liability in American courts,” and concluding, “The regulated conduct—the litigation of civil claims in federal courts—occurs entirely domestically in its application here.”⁶³ The Ninth Circuit, too, adopted this reasoning, in *Gonzalez v. Google*, explaining: “[B]ecause § 230(c)(1) focuses on limiting liability, the relevant conduct occurs where immunity is imposed, which is where Congress intended the limitation of liability to have an effect, rather than the place where the claims principally arose. As such, the conduct relevant to § 230's focus is entirely within the United States—i.e., at the situs of this litigation.”⁶⁴ The courts concluded that the presumption against extraterritoriality did not apply to the assertion of Section 230 as a defense in U.S. courts because such use of the law is domestic, not extraterritorial.

As discussed earlier, in *Force v. Facebook*, the estates of four U.S. citizens killed (as well as one U.S. citizen who was injured) in a terrorist attack in Israel brought claims against Facebook in U.S. and Israeli law arising out of the foreign act. They sued, arguing that Section 230 immunities were unavailable because their claim lay against Facebook's friend and content suggestions, which, the

⁶⁰ *Id.* at 1585.

⁶¹ *Cohen v. Facebook, Inc.*, 252 F. Supp. 3d at 159 (E.D.N.Y. 2017), *aff'd in part, dismissed in part sub nom.* *Force v. Facebook, Inc.*, 934 F.3d 53 (2d Cir. 2019).

⁶² *Id.* at 160.

⁶³ *Force*, 934 F.3d at 74.

⁶⁴ *Gonzalez v. Google LLC*, 2 F.4th 871, 888 (9th Cir. 2021).

plaintiffs argued, made Facebook a developer of content, rather than its publisher. Plaintiffs argued that “Facebook’s algorithms ‘develop’ Hamas’s content by directing such content to users who are most interested in Hamas and its terrorist activities, without those users necessarily seeking that content.”⁶⁵ Section 230 designates anyone who “develops” the information at issue an “information content provider,” and thus ineligible for the immunity.⁶⁶ The Second Circuit rejected the plaintiffs’ argument, ruling instead that the friend and content suggestion algorithms constituted editorial decisions of the type that publishers make, and that they thus fell within the scope of Section 230.

In three cases that were consolidated for appeal in *Gonzalez v. Google*, family members of those killed in terrorist attacks in Istanbul, Paris, and San Bernardino sued Google, Facebook, and Twitter on the basis of the Anti-Terrorism Act (ATA), arguing that these companies had aided and abetted the terrorism by allegedly permitting terrorists to share messages and allowing monetization of videos supporting terrorism. The internet companies asserted Section 230 as a defense. The plaintiffs argued that the ATA impliedly repealed Section 230 immunity with respect to terrorism, but the Ninth Circuit concluded that this would violate a presumption against implied repeal and would mean that every liability statute enacted after Section 230 had repealed it in part.⁶⁷

As we have seen, the Ninth Circuit also rejected the plaintiffs’ claim that terrorist incidents overseas were not subject to Section 230 because of the presumption against extraterritoriality. But the Ninth Circuit sided with the plaintiffs to conclude that Section 230 did not protect Google against claims that it provided ISIS with material support by sharing ad revenue on YouTube video with accounts allegedly held by ISIS. Because those claims did not “depend on the particular content ISIS places on YouTube,” they were not immunized by Section 230, the Ninth Circuit said.⁶⁸ The Ninth Circuit held, however, that the family members of the victims of the Paris attacks had not sufficiently alleged that any support provided by Google to ISIS was substantial, as required by the ATA.

⁶⁵ *Force*, 934 F.3d at 68.

⁶⁶ 47 U.S.C. § 230(f)(3).

⁶⁷ *Gonzalez*, 2 F.4th at 890.

⁶⁸ *Id.* at 898.

With respect to the plaintiffs in the San Bernadino case, the Ninth Circuit concluded that they failed to plausibly allege that those acts were ordered by ISIS and thus any claim against the internet companies for allegedly aiding and abetting ISIS failed. The Ninth Circuit allowed only the ATA aiding-and-abetting case brought by family members of a Jordanian citizen killed in Istanbul to proceed.

In *Fields v. Twitter*, the family of two U.S. contractors killed in Jordan sued Twitter, alleging that Twitter was in part responsible because it allegedly provided accounts to members of the terrorist group ISIS and allowed them to privately message each other using its service.⁶⁹ On appeal, the Ninth Circuit did not reach the question of whether Section 230 protected Twitter in the case, instead dismissing the case on a failure to adequately plead that Twitter directly caused their family members deaths, as required by the ATA.

In *Pennie v. Twitter*, victims of a Texas shooting alleged that Facebook, Google, and Twitter were liable because they allegedly provided material support to Hamas, a Palestinian entity designated as a foreign terrorist organization, primarily by providing access to online social media platforms.⁷⁰ The district court did not reach the question of whether Section 230 applies where an interactive service provider shares advertising revenue with a content developer that has been designated a foreign terrorist organization. Rather, the court concluded that the plaintiffs had failed to allege “a causal connection between Hamas and the Dallas shooting.”⁷¹

In another case, the operator of a site called MisandryToday.com sued Google for censoring and demonetizing his YouTube channel.⁷² Google had allegedly refused to allow the plaintiff to earn advertising revenues, invoking its “advertiser-friendly” content guidelines, which ban “hateful conduct.”⁷³ In that case, Section 230 proved a shield against claims that internet platforms are agents of foreign governments when they adhere to

⁶⁹ *Fields v. Twitter, Inc.*, 200 F. Supp. 3d 964, 970-71 (N.D. Cal. 2016).

⁷⁰ *Pennie v. Twitter, Inc.*, 281 F. Supp. 3d 874, 876 (N.D. Cal. 2017).

⁷¹ *Id.* at 891-92.

⁷² *Lewis v. Google LLC*, 461 F. Supp. 3d 938, 945 (N.D. Cal. 2020), *aff'd*, 851 F. App'x 723 (9th Cir. 2021).

⁷³ *Id.* at 949.

content moderation guidelines supported by those foreign governments. The plaintiff claimed that Google had become an agent of “The Peoples Republic of China, the EU, and the signatory governments of the Christchurch Call agreement,” which was a joint pledge in response to the terrorist attack on a Christchurch mosque. He argued that Google’s actions were based on its “opposition to Plaintiff’s Christian religious affiliation, ‘national origin as a patriotic American citizen who supports American tradition and culture,’ and his First Amendment rights.”⁷⁴ Among plaintiff’s proof of Google’s complicity with foreign governments was the fact that Google leaders met with the Chinese President in Seattle. In addition, the plaintiff challenged the constitutionality of Section 230 because it allows Google to censor without liability; he also argued that Google could not rely on Section 230 as a defense because it had not acted in good faith. The district court ruled that Section 230 barred the various claims and held that Section 230(c)(1) had no good faith requirement.⁷⁵ (Despite some claims to the contrary, courts routinely allow defendants to rely on § 230(c)(1) for decisions taking down or otherwise moderating content, which they routinely treat as “editorial” decisions.) The Ninth Circuit affirmed in an unpublished opinion.

E. Foreign Judgments

Foreign judgments can usually be domesticated in U.S. courts through the process of recognition and enforcement, subject to certain constraints. In 2010, through the Securing the Protection of our Enduring and Established Constitutional Heritage (SPEECH) Act, Congress sought to ensure that Section 230 would be available to protect against efforts to import more censorious liability regimes into the U.S. from abroad through that recognition and enforcement process.⁷⁶ The statute makes it clear that interactive computer services would receive Section 230 protections in U.S. courts from foreign defamation decisions.⁷⁷ That is, even if a plaintiff

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Securing the Protection of our Enduring and Established Constitutional Heritage (SPEECH) Act, Pub. L. 111-223, 124 Stat. 2380.

⁷⁷ *Id.* (“[A] domestic court shall not recognize or enforce a foreign judgment for defamation against the provider of an interactive computer service . . . unless [it] determines that the judgment would be consistent with section 230 if the

successfully brought a defamation suit in a foreign court against an interactive computer service for publishing harmful material, that internet service would still be protected against enforcing that order in the United States. The SPEECH Act also ensures the availability of declaratory judgments against foreign judgments that would tread on First Amendment protections, had they been rendered in the U.S. In the SPEECH Act, Congress went beyond protecting free expression within our borders, or even across American borders, declaring its support for “freedom of expression *worldwide*,” and connecting the internet to that goal.⁷⁸

IV. Legal Imperialism or Fostering Global Discussion?

Is the globalization of Section 230 yet another example of American imperialism? While the spread of Section 230 as a kind of default norm certainly reflects the influence of free speech values, there is a substantial constraint on any “imperial” ambitions: ultimately, nation-states are free to diverge from Section 230, imposing greater liabilities on internet speech platforms.

Section 230 ultimately is only a shield from lawsuits involving foreign matters in U.S. courts, leaving foreign nations to choose a different path. Thus, Section 230 only means that internet speech platforms do not fear liability *in the United States*, but might yet face liability abroad. Thus, the global influence of Section 230 will depend on what nation-states do. In the classic *LICRA v. Yahoo!* case, Judge Jean-Jacques Gomez intervened in the globalization of U.S.-style free speech by requiring the platform to modify its ostensible International Law of Yahoo!, which allowed the sale of Nazi memorabilia online, to exclude Nazi materials from French eyes. Yahoo! indeed did so.⁷⁹ As Daphne Keller writes, foreign jurisdictions still hold enormous power:

information that is the subject of such judgment had been provided in the United States.”).

⁷⁸ *Id.* (“The advent of the internet and the international distribution of foreign media also create the danger that one country’s unduly restrictive libel law will affect freedom of expression *worldwide* on matters of valid public interest.”).

⁷⁹ *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1205 (9th Cir. 2006) (“In early 2001, after both interim orders had been entered by the French court, and after Yahoo! had filed suit in federal district court, Yahoo! adopted a new policy prohibiting use of auctions or classified

Courts in important foreign markets have significant enforcement power of their own. Noncompliant American companies may find their assets seized, their employees arrested (as has happened to platforms in Brazil and India), or markets disrupted by service blockages (as has happened in China, Russia, Turkey, and Malaysia, among other places).⁸⁰

Thus, reliance on Section 230 as global law shares the same limitation as reliance on the Brussels Effect,⁸¹ the phenomenon where European law is de facto or de jure globalized: other states can disrupt the globalization of any norm by enforcing contrary law. For example, Section 230 could not protect Twitter from being blocked in Nigeria after it deleted speech by the country's president for promoting violence.⁸² To take another example, the European Union's right to be forgotten requires Google to de-index material that is deemed "inadequate, irrelevant or no longer relevant, or excessive in relation to [the] purposes [of the processing] and in the light of the time that has elapsed."⁸³

Indeed, to call the spread of greater speech protection 'imperial' might have the question backwards, as such protections are codified in international human rights instruments as well.⁸⁴ We could instead postulate a reverse-Section 230 that would possibly fall into legal imperialism. Imagine if U.S. law imposed liability on internet

advertisements on Yahoo.com 'to offer or trade in items that are associated with or could be used to promote or glorify groups that are known principally for hateful and violent positions directed at others based on race or similar factors.'"); *Ligue Contre le Racisme et l'Antisémitisme & Union des Etudiants Juifs de France v. Yahoo! Inc. & Yahoo France*, Tribunal de grande instance [T.G.I.] [ordinary court of original jurisdiction] Paris, Nov. 20, 2000 (Fr.).

⁸⁰ Daphne Keller, *Internet Platforms: Observations on Speech, Danger, and Money* (Hoover Inst. Aegis Series Paper No. 1807, 2018), https://www.hoover.org/sites/default/files/research/docs/keller_webreadyfinal.pdf.

⁸¹ BRADFORD, *supra* note 8, at 2.

⁸² Kim Lyons, *Twitter blocked in Nigeria after deleting a tweet by its president*, THE VERGE (Jun. 5, 2021), <https://www.theverge.com/2021/6/5/22520166/twitter-suspended-nigeria-delete-tweet-president-violate-rules>.

⁸³ *Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González*, ¶ 93, Judgment of the Court (Grand Chamber), 13 May 2014.

⁸⁴ See Land, *supra* note 6.

platforms for permitting or refusing to remove certain speech that was legal elsewhere. This would use pressure in the U.S. to modify speech elsewhere, a tactic that would indeed tread on foreign sovereignty. Of course, global takedown orders might have this flavor—demanding the removal of content worldwide.⁸⁵

Another critical feature of the free speech culture fostered by Section 230 is the role of U.S.-based technology companies in hosting speech by political dissidents worldwide. By keeping the U.S. open to a wide variety of speech, we help keep the global internet open for a wide variety of speech, even speech that might be illegal elsewhere in the world. Because ISP filters, DNS blocks, and deep-packet inspection are often used to target the speech of marginalized voices, the whole-hearted embrace of speech represented by Section 230 is a lifeline to dissidents worldwide. While foreign governments can demand that Facebook or YouTube remove content that they dislike on political grounds, if those platforms refuse to remove it, it can be hard for foreign governments to effectuate the censorship without blocking large swaths of the internet, which often proves untenable for a variety of reasons. At times, global internet platforms have resisted foreign censorship orders or orders to restore government accounts, and at other times, they have capitulated to those demands. Google and Apple, for example, removed from their app stores a voting app created by allies of opposition leader Aleksei Navalny after Russian authorities “threatened to prosecute [the tech companies’] local employees.”⁸⁶ At the same time, Google’s YouTube thus far remains available inside Russia, providing access to uncensored information about the Russian invasion of Ukraine.⁸⁷

⁸⁵ Jennifer Daskal, *Speech Across Borders*, 105 VA. L. REV. 1605, 1615-36 (2019) (reviewing recent cases involving global takedown orders).

⁸⁶ Anton Troianovski & Adam Satariano, *Google and Apple, Under Pressure From Russia, Remove Voting App*, N.Y. TIMES (Sept. 17, 2021), <https://www.nytimes.com/2021/09/17/world/europe/russia-navalny-app-election.html>.

⁸⁷ Sam Schechner, Miles Kruppa, & Evan Gershkovich, *How YouTube Keeps Broadcasting Inside Russia’s Digital Iron Curtain*, WALL ST. J., Aug. 8, 2022, 5:30 am ET, (noting that “the Kremlin may deem YouTube too popular to block”).

Because Section 230 protects platforms both when they restrict user content and when they do not, as long as they did not develop the content themselves, critics argue that it enables a careless attitude to harm suffered by others. Indeed, Facebook failed to devote sufficient resources to moderate content adequately in Myanmar, permitting some to use it to abet violence targeted at a religious group.⁸⁸ However, the largest internet platforms, thus far, have chosen to draw community guidelines that restrict some speech that may be legal in the United States.⁸⁹ They remove a lot of speech that is “lawful but awful.”⁹⁰ There are many reasons that make this the sensible choice, including possibly a sense of social responsibility, a desire to avoid bad press, and the demands of advertisers. In a variety of ways, Section 230 helps promote free speech while also enabling platforms to engage in content moderation that largely improves public discourse.

Conclusion

When Google withdrew from China in 2010, protesting publicly about hacking and censorship,⁹¹ the Chinese state organ *People’s Daily* responded by condemning Google as “a tool of the US to implement its hegemony.”⁹² The Chinese authorities are hardly alone. The global dominance of U.S. technology companies has led many across the world to voice a similar worry about the export of U.S. free-expression norms. But there are good aspects of

⁸⁸ Jenny Domino, *Crime as Cognitive Constraint: Facebook’s Role in Myanmar’s Incitement Landscape and the Promise of International Tort Liability*, 52 CASE W. RES. J. INT’L L. 143 (2020); Hamilton, *supra* note 17, at 140 (“First, the online reporting system available in other locations did not function on the Messenger service through which most people in Myanmar access Facebook Additionally, Facebook had entered the Burmese market without translating its Community Guidelines into Burmese and there were no Burmese-speaking Facebook staff.”).

⁸⁹ Klonick, *supra* note 15, at 1621, 1625.

⁹⁰ Goldman & Miers, *supra* note 13, at 194. Cf. Harold Hongju Koh, Legal Adviser, U.S. Dep’t of State, Speech at the Annual Meeting of the American Society of International Law: The Obama Administration and International Law (Mar. 25, 2010), <https://2009-2017.state.gov/s/l/releases/remarks/139119.htm> (noting that role of State Department Legal Advisor is to warn against “lawful but awful” policy options).

⁹¹ Anupam Chander, *Googling Freedom*, 99 CALIF. L. REV. 1 (2011).

⁹² REBECCA MACKINNON, CONSENT OF THE NETWORKED 8 (2012).

this globalization—supporting the broad exercise of voice by groups often omitted from the dominant cultural and news platforms available, and permitting platforms to moderate speech that targets certain groups.⁹³ For better or worse, Section 230 helped build the global internet we know today. Any efforts to restrict Section 230 must grapple with the implications of such restrictions for global speech.

⁹³ Anupam Chander, *Whose Republic?*, 69 U. CHI. L. REV. 1479, 1488-89 (2002).