

Executive Order Aimed at Restricting Civil Liability Protections Afforded to Social Media Companies

On May 28, 2020, President Trump signed an [executive order](#) aimed at limiting the protections afforded to social media companies like Twitter and Facebook. The executive order was signed shortly after Twitter added fact-checking links to two of the President's tweets regarding the efficacy of absentee voting from California.

The Communications Decency Act

The executive order is intended to modify Section 230 of the 1996 Communications Decency Act. (47 U.S.A. § 230.) The Act provides broad immunity to social media platforms from being sued for the content they host. It permits those platforms to regulate the content pursuant to their own terms and conditions. In relevant part, Section 230 states, "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." (47 U.S.A. § 230(c)(1).) Accordingly, under the Act, a social media service provider is protected from liability for republishing or hosting content that could otherwise render them liable under a number of laws. Section 230 also prohibits a provider or user from facing civil liability for taking any action "in good faith" to restrict access to or availability of material the provider or user considers to be "obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable." (47 U.S.A. § 230(c)(2).) However, Section 230 carves out exceptions for violations of criminal law and intellectual property law. (47 U.S.A. § 230(e).)

The Executive Order

The executive order seeks to limit or modify the civil liability immunities extended to social media providers if they restrict certain users' content. Specifically, it seeks to clarify the scope of Section 230, so as to prevent the application of the Section 230 immunities beyond its specific text and purpose. It further provides that the civil liability limitations of Section 230 should not extend to online platforms that fail to act in good faith in the removal of objectionable content, or otherwise engage in deceptive or pretextual action to stifle certain viewpoints. The executive order instructs each executive department and agency to take appropriate action consistent with the order. It directs the Federal Communications Commission, within the next 60 days, to promulgate rules governing the circumstances under which social media platforms can maintain their immunity. It also instructs each executive department and agency to review its federal spending for marketing on online platforms and, within the next 30 days, report their findings to the Management and Budget Director. The

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executive order further directs the Federal Trade Commission to consider taking action to prevent unfair or deceptive conduct by entities that restrict speech, these entities of which otherwise fall within the protections of Section 230.

Legal Implications

The executive order could open the doors for lawsuits against social media companies for potential liability under a variety of legal theories. The effect of the order, and its enforceability if challenged, remain to be seen. However, federal courts have consistently, and recently, upheld the protections provided by Section 230 to social media companies, as they are private entities. The distinction between public and private entities is relevant because First Amendment protection generally applies to governmental restrictions on free speech, and not to restrictions by private entities. Indeed, on May 27, 2020 in *Freedom Watch, Inc. v. Google Inc., et al.*, the District of Columbia Court of Appeals rejected a claim for First Amendment violations against a group of social media and other internet companies. The court found that the claim did not adequately allege that the social media platforms could violate the First Amendment because they are private entities.

Buchalter has a team of social media lawyers that negotiate transactions, draft contracts, litigate disputes, handle intellectual property, financial and compliance issues, and provide related advice and counsel. If we can be of assistance, please feel free to contact any of the Buchalter social media lawyers below:



Eric Kennedy

Shareholder
(213) 891-5051
ekennedy@buchalter.com



Michael J. Worth

Attorney
(213) 891-5232
mworth@buchalter.com

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