

Online Freedom Act

118th CONGRESS

1st Session

H.R.

Legislative Intent: To amend the Communications Decency Act (“CDA”) of the Telecommunications Act of 1996 (a portion of the Communications Act of 1934) by narrowing the subjective regulatory provisions and civil liability protections of Title 47, United States Code, Section 230. To define “*offensive material*” with precision, in accordance with *generally accepted proscribed speech standards*, constitutional standards, and / or canons of statutory construction. This bill defines the parameters of entitlement to “Good Samaritan” immunity more explicitly to ensure liability protections exist only when prohibitions are plainly stated, regulatory actions (or omissions) are uniformly enforced, in *good faith*, and in the interest of the public.

IN THE HOUSE OF REPRESENTATIVES

JANUARY _____, 2023

M. _____ introduced the following bill which was referred to House Committee on Energy and Commerce.

A BILL

To realign the limited federal immunity (the “Good Samaritan” – predicated protection) of Title 47, United States Code, Section 230 (the “CDA”) with its original purpose(s), namely to protect children from harm, facilitate online free speech, and to restore accountability of an interactive computer service provider that does not act in good faith, in the public’s interests, and / or for the good of others.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Online Freedom Act” (“OFA”).

SECTION 2. SCOPE OF PROTECTION.

Section 230 of the Communications Decency Act of 1996 (Title 47, United States Code, Section 230) is amended—

Authored by David Morgan and Jason Fyk

Online Freedom Act (06-21-2022)

Online Freedom Act

(c) PROTECTION FOR “GOOD SAMARITAN” BLOCKING AND SCREENING OF PROSCRIBED MATERIAL.

(1) TREATMENT OF PASSIVE PUBLISHER OR SPEAKER

No provider or user of an interactive computer service shall be treated as the principal publisher or speaker for any action entirely taken by, or any information entirely provided by, another information content provider.

(2) ACTIVE PUBLISHER OR SPEAKER CIVIL LIABILITY PROTECTION

No provider or user of an interactive computer service shall be held liable on account of—

(A) any action, voluntarily and uniformly undertaken in good faith, to restrict access to or availability of material that the provider or user reasonably considers patently offensive, impermissible, or has plainly and precisely stated is prohibited in accordance with generally accepted contemporary community standards; or

(B) any action taken to enable or make available to other information content providers the technical means to restrict access to material described in Subsection 230(c)(2)(A), is subject to the protection of Subsection 230(c)(1).

(d) OBLIGATIONS OF INTERACTIVE COMPUTER SERVICE

An interactive computer service is accountable to the public, with its actions subject to judicial review. An interactive computer service shall engage in reasoned decision-making, and courts are directed to set aside any decision that is arbitrary or capricious, not in good faith, or not that of a “Good Samaritan.”

(1) An interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service, (a) notify such customer that parental control protections are commercially available (such as computer hardware, software, or filtering services) that may assist the parents or guardians in limiting access to material that is harmful to minors; or (b) make parental control protections directly available to the customer.

(2) To maintain liability protection, a provider of an interactive computer service shall make all reasonable effort in good faith to abide by at least the following:

- (A) Act as a “Good Samaritan;”
- (B) Protect children from harm or indecencies;
- (C) Preserve free and open debate;
- (D) Timely notify authorities of any credible threat of violence or eminent harm;
- (E) Establish clear and precise prohibitions;
- (F) Enforce prohibitions uniformly;

Online Freedom Act

- (G) Timely cite the specific violation when any action is taken to restrict user material;
- (H) Establish a dispute resolution process and attempt to resolve disputes expeditiously;
- (I) Provide equal access to services;
- (J) Only a United States citizen is authorized to restrict the materials of another United States citizen;
- (K) Strictly maintain user privacy;
- (L) Not interfere with private communications, unless such communication is to a minor; and
- (M) Not engage in anticompetitive, unlawful, or deceptive restrictions.

(f) DEFINITIONS

As used in this section:

(1) INTERNET

The term “Internet” means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2) INTERACTIVE COMPUTER SERVICE

The phrase “interactive computer service” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3) INFORMATION CONTENT PROVIDER

The phrase “information content provider” means any person or entity that is directly or indirectly responsible, in its entirety or to any divisible extent, for the act of bringing material into existence or for any action(s) taken to solicit, expound, encourage, sponsor, make available, modify, manipulate, advance, and / or promote the growth of information provided through the Internet or any other interactive computer service, especially by deliberate effort over time.

(4) ACCESS SOFTWARE PROVIDER

The phrase “access software provider” means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

- (A) filter, screen, allow, or disallow content;
- (B) pick, choose, analyze, or digest content; or
- (C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

(5) “GOOD SAMARITAN”

The phrase “Good Samaritan” means any action taken, to render care for the good of others, in the public’s interest, in good faith, not for compensation and without gross negligence or wanton and willful misconduct.

Online Freedom Act

(6) GOOD FAITH

The phrase “good faith” means an honest and sincere intention to deal openly, promptly, honestly and fairly, regardless of outcome.

(7) REASONABLY CONSIDERS

The phrase “reasonably considers” means using moderate, fair, and sound judgment to justify a decision based on intelligible and rational grounds or motive.

(8) IMPERMISSIBLE

The term “impermissible” means any prohibited or illicit information contrary to accepted morality or convention (e.g., cyberstalking, sex trafficking, trafficking in illegal products or activities, sexual exploitation, obscenity, defamation, fraud, incitement, fighting words, true threats, speech integral to criminal conduct, child pornography, or materials otherwise proscribed by law).

(9) PLAINLY AND PRECISELY STATED - PROHIBITIONS

The phrase “plainly and precisely stated” - prohibitions means to define an offense with sufficient definiteness and clarity that the ordinary person can understand what conduct is prohibited, in a manner that discourages arbitrary or discriminatory enforcement.

(g) GOOD FAITH DISPUTE RESOLUTION

If after a period of at least fourteen (14) days, internal processes have failed to resolve a dispute, but before a party initiates a lawsuit or other legal proceeding against another party, a party may challenge the provider or user’s entitlement to “Good Samaritan” status by requesting a streamlined arbitration hearing for the limited purpose of determining whether the provider or user’s actions were in accordance with the “Good Samaritan,” good faith provisions of the statute.

A party will notify the interactive computer service, in writing, of a dispute and request for an arbitration hearing. Each party will then designate an agent with decision-making authority. During their discussions, the parties will honor reasonable requests for information relating to the dispute or claim. Arbitration is subject to the following minimum criteria: (i) the parties will determine a mutually agreed upon arbitrator; (ii) the parties shall equally share in the costs to initiate and carry out an expedited resolution dispute process; (iii) every party shall submit any information it wishes the arbitral tribunal to consider within seven (7) days of the submission of the initial claim; the parties may make supplemental submissions following the initial claim; (iv) the arbitral tribunal shall issue its determination within 30 days after the parties’ submission of evidence; and (v) the prevailing party shall be reimbursed by the other party its aforementioned fees and/or costs up to a maximum of \$15,000.