



ONLINE FREEDOM ACT

"If you are unable to understand the cause of a problem
it is impossible to solve it."

Naoto Kan

RESEARCHED AND PREPARED

BY:

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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—

(c) PROTECTION FOR “GOOD SAMARITAN” BLOCKING AND SCREENING OF ~~OFFENSIVE~~ 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 of 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 ~~considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected~~ 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 ~~paragraph (1).~~ Subsection 230(c)(2)(A), is subject to the protection of Subsection 230(c)(1).

(d) OBLIGATIONS OF INTERACTIVE COMPUTER SERVICE

~~A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.~~

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;
 - 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.

(e) Effect on other laws (No change)

(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 ~~term~~ phrase “information content provider” means any person or entity that is directly or indirectly responsible, in whole or in part, for the creation or development of ~~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.

(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.

SUMMARY

The Mission: To realign the Communications Decency Act of 1996 (the “CDA,” Title 47, United States Code, Section 230) with the interests of the public, its original intent, and the Constitution of the United States of America.

The Background:

In 1996, Congress sought to *protect* an *Interactive Computer Service* (“ICS”) provider or user who *voluntarily* chooses (*i.e.*, the private prerogative) to *block and screen* (*i.e.*, the state prescribed act) *obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable material*, so long as they act as a “*Good Samaritan*” in *good faith* (*i.e.*, the state prescribed manner), *whether or not such material is constitutionally protected*.¹

The Problem:

Justice Thomas preciously noted “*the problem*” in *Enigma vs. Malwarebytes*, “*courts have extended the immunity in §230 far beyond anything that plausibly could have been intended by Congress... Courts have also departed from the most natural reading of the text by giving Internet companies immunity for their own content... Courts have long emphasized non-textual arguments when interpreting §230, leaving questionable precedent in their wake.*”

In its current form, Section 230 grants *vast regulatory discretion* to private self-interested corporations, without providing any qualifications, oversight or procedural safeguards. Compounding the statute’s already overbroad, unqualified regulatory discretion, courts have also relied on “*non-textual arguments*” when interpreting Section 230, leaving more “*questionable precedent*” in their wake. As a result, Section 230 transformed from, what was already *vast, overbroad, questionable* regulatory discretion, into *implausible online sovereignty*. Section 230’s substantially overbreadth (*i.e.*, *arguably unconstitutional*) authority must, therefore, be revoked and / or replaced immediately!

The Administrative Law:

- The Supreme Court recognized Congress cannot possibly create, adjudicate and enforce every single law (*i.e.*, regulatory code). This created a need for commissions (*e.g.*, the FCC). A commission² is tasked with creating, adjudicating, and enforcing regulatory code for an industry. Commissions are authorized to act as an administer³ of a Congressional directive (*i.e.*, as a state agent), to perform a prescribed act in a prescribed manner.
- Title 47 U.S. Code Section 230 commissions private entities, to “voluntarily” act as a representative of Congress, in the prescribed way (*i.e.*, “to block and screen offensive material”),

¹ In *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935), the Supreme Court held that ‘***Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested.***’ The Supreme Court has recognized that Congress could not delegate powers that were ‘***strictly and exclusively legislative.***’

² <https://www.merriam-webster.com/dictionary/commission> 2a: an authorization or command to act in a prescribed manner or to perform prescribed acts :

³ <https://www.merriam-webster.com/dictionary/administer>: manage or supervise the execution, use, or conduct of

and in the prescribed manner (*i.e.*, as a “Good Samaritan” in good faith) to create, adjudicate, and enforce rules (*i.e.*, administer regulatory code) for the internet industry under the protection of government.

- Typically, **public** (*disinterested*) commissions must follow their own set of rules (*i.e.*, qualifications and procedural guidelines). For example, the FCC must follow the Administrative Procedures Act (APA). When any agency takes an “agency” action, to deny a United States citizen of life, liberty, or property, and that action is arbitrary, capricious or it does not follow the Administrative Procedures Act, that action or regulatory code can be challenged in a court law.
- Unlike public commissions who are subject to strict qualifications, oversight, and procedural safeguards, a **private** (*self-interested*) commission (*e.g.*, in the case of Section 230), has **no qualifications, no legislative oversight, no procedural safeguards** and is **largely uncontrollable**⁴ by the courts.
- Simply put, Section 230 grants self-interested private corporations state authority, to arbitrarily deny US citizens of their liberty and property, under the protection of government, for any reason, without cause, qualification, procedural safeguard or legislative oversight, and their actions are largely uncontrollable by the courts. In essence, Section 230 grants any unqualified, *privately owned Interactive Computer Service Providers*, the **absolute, unlimited, uncontrollable, sovereign** (*i.e.*, ‘state’) **protection**, to **unconstitutionally restrict** the “life, liberty and property” of others, without any Due Process.

The Cause:

“The [*Commission*] (*e.g.*, ICS) issues a **legislative rule** (*e.g.*, Community Standard) under **authority given to it by Congress in statutes** (*e.g.*, Title 47 U.S. Code Section 230). The **statutory delegation of authority** (*e.g.*, to block and screen offensive material) can range from **broad discretionary authority** (*e.g.*, in good faith as a “Good Samaritan”) **to a very specific mandate** (*e.g.*, strict qualifications, oversight and procedural guidelines.)”⁵

Section 230 delegates “**broad [exploitable and uncontrollable] discretionary authority**” (*i.e.*, to restrict whatever “the provider or user considers ... objectionable”) when, in practical application, Section must only provide limited protection for “**very specific mandate[s]**” that are not **exploitable**, and not **uncontrollable** by the courts.

The Solution:

There are two approaches to solving the Section 230 “*problem*”. The first is a judicial approach (see: [Fyk vs. The United States](#)), and the second is a legislative approach. The “Online Freedom Act” (“OFA”) represents the legislative approach. **Our ‘solution’ is to replace the applicable subsections of Title 47 U.S. Code Section 230 with the Online Freedom Act, thereby supplanting its “broad [exploitable and uncontrollable] discretionary authority” with “very**

⁴ In *Mistretta v. United States*, 109 S.Ct., 647 (1989) Justice Scalia warned that “*the [broad] scope of delegation is largely uncontrollable by the courts, we must be particularly rigorous in preserving the Constitution’s structural restrictions that deter excessive delegation [e.g., Section 230]. The major one, it seems to me, is that the power to make law cannot be exercised by anyone other than Congress, except in conjunction with the lawful exercise of executive or judicial power.*” *Id.* at 678 (emphasis added).

⁵ <https://www.fcc.gov/about-fcc/rulemaking-process>

specific [controllable] mandates.” The OFA will supplement the necessary qualifications and procedural guidelines, by incorporating *very specific legislative ‘controllable’ mandates (i.e., regulatory oversight)* directly into the statute, which will properly guide judicial review.

The Online Freedom Act articulates the specific “*obligations*” (*i.e., the specific legislative mandates*) that a private commission *must voluntarily abide by (e.g., Section 230(d))*, in good faith, if the service provider is to maintain its civil liability protection, while simultaneously respecting the private commission’s ***Constitutional Right*** not to engage in such *obligations*, absent liability protection. **Put simply, a private entity is not compelled to act, but it shall not be afforded civil liability protection (i.e., the statutory privilege) if it does not choose to voluntarily act under the obligations set forth in the OFA.**

The Fix:

- **Section 230(c):** The word “*offensive*” (meaning: unpleasant or displeasure)⁶ has been substituted with the word “*proscribed*” (meaning; to condemn or forbid as harmful or unlawful)⁷. Any and / or all material can be considered “*offensive*” (*i.e., broad discretion*) to someone. “*Proscribed*” material is far more *specific discretion* that focuses on disallowed or forbidden material.
- **Section 230(c)(1):** The word “*PASSIVE*” has been added to the title to denote this section relates to the publisher or speaker’s *inactive* publishing role (*i.e., definitional protection*). This change serves to delineate the *harmonious* difference between 230(c)(1) and 230(c)(2) protection⁸. Similarly, the word “*principal*” (meaning; controlling authority or is in a leading position)⁹ has been added to delineate “*the*” original publisher from “*a*” secondary publisher¹⁰. This prevents, as Justice Thomas noted, “*giving Internet companies immunity for their own content.*” The phrase “*for any action entirely taken by, or any information entirely provided*” has been altered to clarify (*i.e., mainly to the courts*) all publishing conduct or information content provision *must be taken entirely*¹¹ *by someone else*, other than the provider or user in question.
- **230(c)(2):** The title phrase “*ACTIVE PUBLISHER OR SPEAKER CIVIL LIABILITY PROTECTION*” has been altered to denote this section specifically relates to the publisher or speaker’s *active* publishing role (*i.e., direct liability protection*). This change also serves to delineate the *harmonious* difference between 230(c)(1) and 230(c)(2) protection.
- **230(c)(2)(A):** The phrase “*, voluntarily and uniformly undertaken in good faith,*” has been altered, and commas added, to delineate the difference between the private choice (*i.e., voluntarily undertaken*), to engage in the “*protected*” conduct, and the state authorized *prescribed* directive

⁶ <https://www.merriam-webster.com/dictionary/offensive>

⁷ <https://www.merriam-webster.com/dictionary/proscribe>

⁸ Since Zeran vs. AOL inc., courts have mistakenly believed 230(c)(1) protects *active* “traditional editorial function”. This interpretation is at odds (*i.e., disharmonious*) with the primary function or 230(c)(2). 230(c)(1) can only (*i.e., harmoniously and as a whole text*) relate to *passive hosting—unknowingly hosts* harmful content (*i.e., inactive publishing role whereby the provider fails to remove harmful content*).

⁹ <https://www.merriam-webster.com/dictionary/principal>

¹⁰ Courts have *erroneously interchanged* the words “*a*” and “*the*” thereby converting 230(c)(1) from protection from being treated as “*the*” [*principal*] publisher (*i.e., as someone else, for the conduct and content provision of another*) into not being treated as “*a*” [*secondary*] publisher (*i.e., as themselves, for their own conduct and content provision*).

¹¹ Whether in a primary, secondary, direct, or indirect role (also see: 230(f)(3))

(i.e., any action to restrict proscribed materials). Additionally, any entity, *authorized by the US government*, to regulate content, *must do so uniformly*¹² (See also: Obligation 230(d)(6)).

- **230(c)(2)(A) (con't):** The phrase *"reasonably considers patently offensive, impermissible, or has plainly and precisely stated is prohibited in accordance with generally accepted contemporary community standards; or"* has been altered to shift content moderation decisions away from *unreasonably broad* self-interested consideration 'standards', more towards *reasonably* specific, *generally accepted*¹³ standards, and more towards *plainly and precisely stated prohibited* (i.e., proscribed) materials. The terms *"patently offensive"* and *"impermissible"* speech have been added because they are generally understood to be proscribed speech categories, that already exist within the law. The general purpose of the alterations to this section are to move content consideration away from the private entity's values and standards and more towards the contemporary public's generally accepted values and standards. Any content moderation decision based on economic, ideological, political, ethnic, religious or philosophical viewpoint, would not typically be tolerated under the general public's (i.e., no longer the provider's standards) *generally accepted contemporary community standards*, thus arbitrary, capricious, unfettered or self-indulging moderation decisions, would no longer be subject to civil liability protection.
- **230(c)(2)(A) (con't):** The phrase "whether or not such materials are Constitutionally protected" has been omitted in its entirety, because Congress cannot, constitutionally, delegate the power to restrict speech upon any agent (whether official or private) *because it is not a power that Congress can rightfully exercise itself*.
- **230(c)(2)(B):** The phrase *"materials described in Subsection 230(c)(2)(A), is subject to the protection of Subsection 230(c)(1)"* has been altered to correct the clerical mistake¹⁴ and resolve the statutory confusion. Subsection 230(c)(B) references materials described in "paragraph (1)." Paragraph (1) (i.e., whether (in)correct) statutorily refers to Subsection 230(c)(1), however, it seems to describe the previous paragraph (A), but was mistakenly referred to as paragraph (1). Here, both paragraphs could potentially apply, whereby the materials are described in Paragraph (A) (i.e., Subsection 230(c)(2)(A)) and the protections are the same *passive (definitional treatment)* protection of Paragraph (1) (i.e., Subsection 230(c)(1)). This alteration considers both scenarios and incorporates them accordingly.

(d) GOOD FAITH OBLIGATIONS OF INTERACTIVE COMPUTER SERVICE

To date, Section 230 has virtually *no obligations* (i.e., specific legislative mandates) for the *privilege*¹⁵ of receiving *liability protection*. The only two notable *obligations* are to act as a "Good Samaritan" and in good faith. Traditionally, courts have failed to implement even those minor content moderation motivational obligations (see: *Fyk vs. Facebook*) because private companies are not typically subject to qualifications, administrative procedures, scope of review and / or legislative oversight. The changes contained in this section, do nothing to compel a service provider's actions, but rather, it makes *liability*

¹² "[T]he [SCOTUS] has recognized the narrow categories that the government [or government authorized agent] may regulate because of their content, as long as it does so evenhandedly [i.e., uniformly]."

<https://crsreports.congress.gov/product/pdf/IF/IF11072> (citing *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984)).

¹³ "Generally accepted" because it shifts the consideration standards away from *anything the provider or user considers* offensive, towards the generally accepted proscribed material contemporary standards of the public.

¹⁴ Subsection 230(c)(2)(B), Footnote [1]: "So in original. Probably should be 'subparagraph (A).'"

¹⁵ Privilege: a right or *immunity* granted as a peculiar benefit, advantage, or favor. <https://www.merriam-webster.com/dictionary/privilege>

protection ‘privilege’ contingent upon the Interactive Computer Service voluntarily abiding by the good faith obligations, which are written in accordance with standard public (disinterested) regulatory commission qualifications, and procedural guidelines.

Section 230(d): This section specifically instructs the court to “*set aside any [moderation] decision*” (i.e., deny Section 230 protection privilege) that is arbitrary, capricious, unreasoned, not in good faith, or not that of a “Good Samaritan”: “*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.’*”

- **230(d)(1):** This subsection is a rendered down version of the current preexisting Section (d) obligations of an interactive computer service. This subsection now reads: “*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.*”
- **230(d)(2):** This subsection did not previously exist, and it lays out, in simple terms, the obligations (i.e., the specific legislative mandates) an Interactive Computer Service Provider must voluntarily abide by, in order to maintain civil liability protections. This subsection now reads: “*To maintain liability protection, a provider of an interactive computer service shall make all reasonable effort in good faith to abide by the following:*

(A) *Act as a Good Samaritan.* (General Directive)

(B) *Protect children from harm.* (Principal Motivation)

(C) *Timely notify authorities of any credible threat of violence or eminent harm.* (Public Safety)

(D) *Preserve free and open debate.* (Free Speech)

(E) *Establish clear and precise prohibitions.* (Fair Notice)

(F) *Enforce prohibitions uniformly.* (Uniform Enforcement)

(G) *When any action is taken to restrict material, timely cite the specific prohibition violated.*

(Show Cause)

(H) *Establish a good faith dispute resolution process with third party arbitration as a first step.*

(Due Process)

(I) *Provide equal access to services.* (Equality)

(J) *Only authorize a United States Citizen to restrict another United States citizen.* (Foreign Interference)

(K) *Strictly maintain user privacy.* (Privacy)

(L) *Not interfere with private communications unless such communication is inappropriate and to a minor.* (Common Carrier)

(M) *Restrict only prohibited information.* (Arbitrary / Capricious Enforcement)

(N) *Not engage in anticompetitive, unlawful, or deceptive restrictions.* (Antitrust / Contract Law)

(f) DEFINITIONS:

- **230(f)(3):** Courts have often come to arbitrary determinations as to what is and is not “creation” or “development”, and what is and is not “in whole or in part”. This section serves to adequately define the specific terms and their proper application, thereby eliminating any judicial confusion.

This change prevents the service provider from being able to act as a direct or indirect Information Content Provider, *especially* if content is developed by “*deliberate effort over time*” (*i.e.*, ongoing deceptive algorithmic manipulation - aka deceptive development).

- **230(f)(5):** The purpose for defining the “GOOD SAMARITAN” general provision (*i.e.*, Section 230’s “intelligible principle”) is to ensure Interactive Computer Service Providers act *for the good of others and in good faith*, as the statute was intended. Administrative authority must only be commissioned (*i.e.*, whether private or public, voluntary, or obligatory) *in the interest of the public* (*i.e.*, *not for the interests of the administrator*).
- **230(f)(6):** The purpose for defining the term “GOOD FAITH” is to ensure an Interactive Computer Service Provider’s (in)actions are open, honest, and fair, regardless of the outcome.
- **230(f)(7):** The purpose for defining the term “REASONABLY CONSIDERS” is to ensure moderate, fair and sound judgement is used to *justify a regulatory decision*, based on easily understood and rational grounds or motive.
- **230(f)(8):** The purpose for defining the term “PLAINLY AND PRECISELY STATED PROHIBITIONS” is to ensure the ordinary person clearly knows what is prohibited with sufficient definiteness (*i.e.*, fair notice) that the ordinary person can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. This is to ensure the ordinary person knows what is specifically prohibited, preventing vague overbreadth¹⁶ content restrictions, which can have a discouraging effect (*i.e.*, “*the chilling effect*”¹⁷) or influence *future* permissible speech.
- **230(f)(9):** The purpose for defining the term “IMPERMISSABLE” is to ensure Interactive Computer Service Providers specifically act to eliminate *strictly prohibited, illicit or proscribed information* rather than any information considered mildly “objectionable”. This helps prevent arbitrary and capricious enforcement of vague, overbreadth, self-interested regulations.

(g) GOOD FAITH DISPUTE RESOLUTION

This Section acts as an intermediary arbitration measure, to determine whether the Interactive Computer Service Provider’s actions were taken as a “Good Samaritan” *in good faith* and to provide a more formal pre-suit dispute resolution process, without needlessly burdening the courts. The courts can consider (or not consider) the outcome of the good faith dispute resolution determination, when considering 12(b)(6) dismissal motions. Whether or not the Internet Service Provider chooses to engage in the arbitration process in good faith or not, should also weigh against the court’s immunity determination.

¹⁶ Substantial Overbreadth: a doctrine in constitutional law: a law that prohibits protected conduct (as free speech) as part of its reach may be struck down as unconstitutional if the threat to protected activity is a substantial effect and if it cannot be clearly removed. <https://www.merriam-webster.com/legal/overbreadth>

¹⁷ <https://www.merriam-webster.com/legal/chilling%20effect>