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Free Speech in the Digital Age

Balancing First Amendment Protections with
Private Platform Power

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INTRODUCTION

Executive Summary



Social media platforms have become central spaces for public discourse, yet they are not bound by **First Amendment protections**. This creates a **governance gap** where private companies control the visibility, moderation, and amplification of speech at a massive scale. While concerns about censorship are common, research shows that most content is not fully removed but instead labeled or deprioritized, which still shapes what users see and engage with (Freedom Forum, 2024).

Section 230 of the Communications Decency Act allows platforms to host user generated content without being held legally responsible while also permitting them to moderate harmful material (PBS NewsHour, 2020). As a result, platforms have broad discretion over online speech with **limited transparency or accountability**.

This issue is increasingly important as social media continues to expand. There are approximately **5.79 billion social media users worldwide**, growing at a rate of 5.4 percent annually, with an average of **9.3 new users every second** (DataReportal, 2026). In the United States, social media has overtaken television as the **top source of news**, highlighting its influence over public opinion and political participation (Nieman Lab, 2025).

This memo argues that policymakers should focus on transparency, accountability, and process based regulation rather than direct control of speech content. By regulating how platforms operate instead of what speech they allow, policymakers can better balance **free expression with harm reduction** while maintaining **constitutional protections**.

Context

Problem Definition

The First Amendment protects speech from government restriction, but it does not apply to **private companies**. Social media platforms operate as private entities, meaning they can control what content is **visible, amplified, or removed** (Finch, 2025).

As a result, a small number of corporations now shape public discourse across billions of users. This creates a **governance gap** where platforms function like public forums but are not bound by constitutional protections.

The scale of this influence is massive. Over 5.79 billion people use social media worldwide, meaning platform decisions directly impact **how information spreads and how opinions are formed** (DataReportal, 2026).

— THE DEBATE —



CRITICS ARGUE

- Platforms have too much power.
- Moderation lacks transparency and accountability.



SUPPORTERS ARGUE

- Section 230 is essential for platform functionality.
- It allows removal of harmful content.



Section 230 gives online platforms important legal protections.

Section 230


Section 230 of the Communications Decency Act protects platforms from liability for user generated content while allowing them to **moderate harmful material** (PBS NewsHour, 2020).

This law made the modern internet possible by allowing platforms to host large amounts of content without reviewing every post. As internet use expanded from about 40 million users in 1996 to billions today, this protection became essential (EFF, 2023).

However, Section 230 is now **widely debated**. Critics argue it gives platforms too much power without transparency, while others say it is necessary to keep platforms functional and safe.

Core Policy Tensions

1
FREE SPEECH VS. PRIVATE CONTROL




Constitutional Protections
The First Amendment limits government restriction of speech.

Private Platform Control
Platforms are private companies with full authority to decide what content is visible, amplified, or removed.

VS.

THE TENSION:
Platforms function like public forums, but they are privately owned and have full authority to moderate content.

2
SAFETY VS. CENSORSHIP



Protect Users
Content moderation can reduce harm, misinformation, and harassment.

Risk of Overreach
Inconsistent enforcement raises concerns about bias, viewpoint discrimination, and over-moderation.

VS.

THE TENSION:
Content moderation can protect communities, but it also risks suppressing legitimate speech or imposing bias. (Cazzamatta, 2026)

3
SPEECH VS. AMPLIFICATION




The Right to Speak
Users have the right to express their views online.

The Power to Be Heard
Platforms control whether speech is prioritized, deprioritized, or amplified through algorithms.

VS.

THE TENSION:
Users may be free to speak, but they do not have a right to be algorithmically amplified.

 These tensions show that the challenge is not just about free speech—it is about power, accountability, and the systems that shape our conversations.

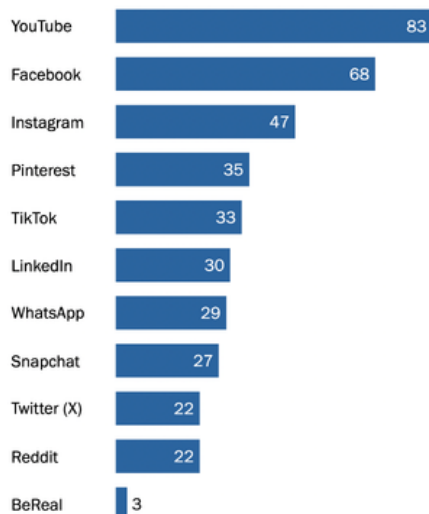
Why This Matters



Millions of users rely on platforms such as TikTok, Instagram, X, YouTube, and Facebook for **news, information, and civic engagement**. As of April 2026, there were approximately 5.79 billion social media user identities worldwide. Social media has surpassed television as a **leading source of news** in the United States. 83% of Americans use YouTube, 68% use Facebook, and 47% use Instagram. As a result, social media has become the primary forum for public discourse, even though it operates **outside First Amendment protections**.

Most U.S. adults use YouTube and Facebook; about half use Instagram

% of U.S. adults who say they ever use ...



Note: Respondents who did not give an answer are not shown.
Source: Survey of U.S. adults conducted May 19-Sept. 5, 2023.
"Americans' Social Media Use"

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Since these platforms are **privately owned**, their decisions about what content is removed, regulated or amplified is not treated the same way as government restrictions on speech. As a result, private companies now make decisions that can **shape democratic participation and public trust**.



Social media platforms rely on **algorithms** and **content moderation systems** to regulate speech and determine what users see online. These systems influence which posts are promoted or removed. However, there is **limited transparency** and **consistency** in how these moderation decisions are made or enforced across users and platforms. This lack of accountability has created concerns that social media companies have **too much power over public discourse without enough oversight**.



Policy Options

A

Increase Transparency

Platforms are largely free to develop algorithms that **amplify or moderate speech** based on the user, **types of posts and key words**. Platforms should be more transparent **policies, data, and algorithmic practices** to ensure **fairness and consistency**.

B

Ensure Due Process for Users

Users should receive **notice** and the **opportunity to edit their content** before platforms remove it all together. Users across all platforms should have the ability to **appeal content removal or restriction** to promote **fairness** or correct **errors made by automated content moderation systems**.

C

Focus on Accountability, Not Censorship

Regulation on digital platforms should have a greater focus on **platform processes** rather than on **silencing users**. Ensuring that **content moderation policies and algorithms** are **consistent and fair** creates a healthier environment for **digital speech and public discourse**.

D

Limit Harmful Amplification

Platforms have significant power in **controlling speech** with limited **oversight or accountability**. **Content moderation** should be used to **minimize harm** and reduce the **spread of misinformation** rather than targeting certain **viewpoints**.

Conclusion



Social media platforms have transformed communication, information access, and public discourse. While they function like modern public forums, they remain privately controlled and are not bound by First Amendment protections.



A small number of corporations now have significant influence over what content is visible, amplified, or restricted across billions of users worldwide.



Harmful misinformation, harassment, and extremist content continue to raise legitimate concerns about safety online.



The solution is not simple government control over speech. Instead, policymakers should focus on building systems that are more transparent, accountable, and fair.



As social media continues to shape democratic participation and public opinion, policies must evolve alongside technology while still protecting the core values of free speech and open discourse.



The goal is balance, not control.

RECOMMENDED APPROACH: A PROCESS-BASED SOLUTION



1. INCREASE TRANSPARENCY

Require platforms to disclose moderation policies, data on content removals, and how algorithms influence what users see.



2. PROTECT DUE PROCESS

Users should receive notice when content is removed or restricted and have access to clear, fair appeals processes.



3. FOCUS ON ACCOUNTABILITY

Regulation should target platform processes, not speech content, ensuring fair and consistent practices without censorship.



4. LIMIT HARMFUL AMPLIFICATION

Platforms should be allowed to reduce the reach of harmful or misleading content without requiring full removal.

“

*The goal is not to control speech itself,
but to ensure the systems shaping it are transparent and accountable.*

”

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