

Balancing Act: Protecting Free Speech and Public Interest in the Digital Age

The rise in social media as a primary way to communicate ideas has brought with it a proliferation of hate speech spawning violence in cities across America. Recently, dangerous rhetoric spread on social media erupted in the attack on the United States Capitol, where rioters desecrated a symbol of American democracy and killed a police officer. The spread of hate and violence sparked by unfettered online speech has prompted many Americans to call on lawmakers to respond by restricting hate speech. On March 26, the triumvirate of social media giants, Jack Dorsey, Mark Zuckerberg, and Sundar Pichai, testified before Congress about the role their platforms played in the Capitol insurrection. At this hearing, lawmakers from both parties agreed that reform is necessary, but disagreed about the best course of action (DeVynck et al., 2021). Freedom of speech is the bedrock of American democracy, which begs the question: How can free speech be balanced with protecting both democracy and American citizens? One possible solution is the proposed bipartisan PACT Act aimed at making companies “more transparent about content moderation” (DeVynck et al., 2021). While recent events have ignited a debate over whether speech should be limited on social media, laws such as those in Germany silencing the free exchange of ideas with prison penalties are not the answer. Instead, social media companies must be more transparent and should be incentivized to amplify the voices of underrepresented communities.

The issue of whether or not to limit free speech is complicated by the fact that people widely misunderstand the First Amendment. The First Amendment protects citizens from *government* limits on expression but does not apply to private corporations, which means that social media companies can restrict speech on their platforms. Access to information has evolved more than any writer of the Constitution could have imagined, and the proliferation of hate speech on social media has prompted Americans and lawmakers from both political parties to call for change. The

challenge becomes developing the best approach to mitigate hate speech online. At the March hearing, Democrats and Republicans called for reform to Section 230 of the Communications Decency Act, which protects internet companies from prosecution when users post content. Signed in 1996 to protect fledgling internet companies, this law has not been amended in 25 years. Revising Section 230 is a possible solution; however, the two parties do not agree on how the law should be transformed. According to *The Washington Post*, Democrats propose changes to limit “the spread of racism and information,” while Republicans argue that companies should reduce efforts that threaten free speech (DeVynck et al., 2021). Supported by Republicans and Democrats alike, the PACT Act proposal would amend Section 230 to require social media companies “to remove posts and other activity courts deem to be illegal within 24 hours” and provide the public with more explanation for why content is removed while providing opportunities to appeal those decisions (Zakrzewski, 2020). The PACT Act should be passed as an effective way to curtail dangerous speech while making the monitoring of content more transparent to the public.

While it is a step in the right direction, the PACT Act alone will not fully address this issue. In response to calls for limiting speech, the Cato Institute warns that often hate speech laws “fall hardest on those they aim to protect” (Samples, 2018). Instead, Samples proposes what he calls the “liberal solution” of “more speech.” Promoting more speech by taking steps to amplify those underrepresented voices would result in more balanced dialogue on social media. This, however, would mean improving the algorithms used to identify hate speech. Daphne Keller, Platform Regulation Director at Stanford University's Cyber Policy Center, explains that algorithms trained to recognize overt and coded hate speech on the internet falsely penalize people of color and non-native English speakers (qtd. in Simon, 2021). Incentivizing social media companies to adjust algorithms to account for these biases could result in “more speech” and more balance to messages

heard on the internet. Improving algorithms and instituting the PACT Act to remove illegal posts and offer the public more transparency on how content is being moderated would be positive steps toward protecting both citizens and free speech.

While this two-pronged approach of passing the PACT Act and improving algorithms is a solution that satisfies lawmakers from both parties, there are other possibilities. Some countries have made extremist speech illegal. In Germany, Volksverhetzung or “the incitement to hatred” or violence against an individual or group, carries a prison sentence of up to five years (Sauerbrey, 2017). However, this would not work in the United States. In a country whose cornerstone is free speech, making speech illegal would never be supported by lawmakers and could turn current social divides into chasms. Moreover, these laws would not eliminate hate itself, and those who spread misinformation and violence will gravitate toward underground platforms. Daphne Keller explains how driving “hateful” voices out of the mainstream where there is actually an exchange of different ideas will expose them to “only views that agree with theirs or views that are more radicalizing” (qtd. in Simon, 2021). Because making speech illegal does not eliminate hate and could result in more extremism, Germany’s laws would not be effective in the United States.

Free speech is essential in our country and can be preserved, even while actions are taken to protect citizens and democracy itself. The time has come to modify Section 230 with the bipartisan PACT Act and adjust algorithms to allow more voices to be heard. Section 230 was developed for internet governance before the explosion of social media, and recent events require modifications reflecting what we have learned about the power of these platforms. We cannot allow calls for change to erode free speech; instead, we should institute proactive measures to curb illegal speech, provide more transparency, and amplify the voices of those who are underrepresented on social media in order to protect the foundation of freedom on which our great country was built.

References

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