

The Internet Imperative Is Protect People by Restoring A Duty-of-Care

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How can American Internet [law](#) protect platforms from people but not protect people from platforms?

Congress passed the Communications Decency [Act](#) (CDA) as part of the 1996 Telecommunications [Act](#) to protect minors from indecent material, but in 1997 the Supreme Court [struck](#) down a key part intended to protect children from indecency online because it [violated](#) adults' First Amendment rights.

The court retained Section 230's "Good Samaritan" [provision](#) of the CDA, which intended to protect Internet platforms from people's lawsuits if they moderated third-party content in good faith.

However, since then "*many courts have construed the law [Section 230] broadly to confer sweeping immunity on some of the largest companies in the world,*" [according](#) to Supreme Court Justice Thomas recently. He also [added](#): "*...Extending Section 230 immunity beyond the natural reading of the text can have serious consequences.*"

In effect, Section 230 has descended into a de facto "Bad Samaritan" impunity loophole, according to the U.S. Department of Justice's [assessment](#) of Section 230 recently.

This anti-Golden Rule loophole favors a [Wild West](#), [winner-take-all](#) Internet where U.S. Internet platforms have no [duty-of-care](#) and no [Golden Rule](#) responsibilities to respect authority or people. Internet platforms can evade legal accountability, harm others and facilitate illicit activity without legal consequence, [according](#) to the U.S. DOJ.

The Internet Imperative problem is that America's only Internet law has been interpreted by courts to protect online platforms, but not protect people from online harms as Congress clearly [intended](#). The bipartisan [solution](#) is amending Section 230 to restore a duty-of-care, i.e., restore the [balance](#) inherent in freedom-with-responsibility and in the Golden Rule.

No Duty of Care Online Is Unsound Public Policy

A recent U.S. Department of Justice letter to Congress on Section 230 [warned](#): "*For too long Section 230 has provided a shield for online platforms to operate with impunity... to escape liability even when they knew their services were being used for criminal activity... [and] to evade laws and regulations applicable to brick-and-mortar competitors*" [i.e., accountability arbitrage.]"

Practically, this Section 230 impunity means courts often summarily [deny](#) victims' lawsuits before full examination of all the facts, effectively denying most victims their right to access the justice system for redress of their online harms.

Through [judicial activism](#) and congressional inaction, Section 230 has transmogrified into a most unsound and unethical public policy that shockingly turns a [blind eye](#) to online activities that would be criminal offline.

The DOJ [letter](#) to Congress transmitting its draft [legislation](#) to reform Section 230 [stated](#): "*Section 230 immunity is meant to incentivize and protect online Good Samaritans. Platforms that purposely solicit and facilitate harmful criminal activity — in effect, online Bad Samaritans — should not receive the benefit of this immunity.*"

Government Has Failed to Protect People from Online Harms

Protecting people from harms, from which people can't protect themselves, is a government *raison d'être*.

The most basic government [protection](#) of people is a standard legal duty-of-care to not harm others. It should be a given for everyone, like it [always was](#) before [activist courts](#) created a de facto Section 230 “Bad Samaritan” impunity loophole.

Any sound system of justice is based on a duty-of-care ethic because it is the legal version of the Golden Rule — treating others as one wants to be treated. Law generally prohibits what no one wants done to them: e.g., being harmed, cheated, robbed, etc.

A Nation Divided Cannot Stand

Now that everyone, everywhere, conducts everything over the Internet, America is increasingly a nation divided by an ever-present, polarizing, duty-of-care [double standard](#).

We are a nation [divided](#) by polar offline-online laws and [incentives](#). Offline law promotes a duty-of-care via freedom-with-responsibility and the Golden Rule, i.e., doing what is right, true, fair, and peaceful. Online law now perversely [promotes](#) freedom-without-responsibility and no-duty-of-care impunity that favors and celebrates the opposite, e.g., what is harmful, fake, self-centered and disruptive.

No-duty-of-care for others or society — combined with what comes with it, asymmetric accountability, unequal protection under the law; and unequal access to justice — predictably brings out the worst in people and evidently fuels societal [dissension](#), [disruption](#) and [decay](#).

No-Duty-of-Care Favors and Incentivizes Harmful Gatekeeper Business Models

Section 230 overwhelmingly [incentivizes](#) Internet platforms to leverage their “[Bad Samaritan](#),” special impunity to take advantage of their [conflicted](#) middleman position over commerce and content online, i.e. [gatekeeper](#)-capitalism, where foxes go to guard henhouses.

These [gatekeeper](#) business models are harmful for five big reasons.

First, Internet platforms’ de facto, no-duty-of-care [license](#) to ignore the rules, laws and associated costs that non-platforms must obey and pay, [incentivizes](#) irresponsibility towards others by making irresponsibility cost-free, the opposite of how normal duty-of-care incentivizes freedom-with-responsibility by making irresponsibility costly.

Second, Section 230 impunity enables, incentivizes and favors multi-sided [gatekeeper](#) business models that can non-transparently and unaccountably manipulate supply and demand. This can mean economy-wide [severing](#) of normal trusted direct customer relationships and supplanting them with dominant biased-broker [models](#) where middlemen can [meddle](#), [self-deal](#) and [self-preference](#) with unbeatable inequity.

Third, a no-duty-of-care, gatekeeper business [model](#) can be irresponsibly [dehumanizing](#). People can become products; customers become [users](#) to [addict](#); suppliers become [piggy banks](#) to [raid](#); and communities become [dumps](#) for platforms’ socialized costs and risks.

Fourth, the Internet platforms’ gatekeeper business model’s dependence on special government, no-duty-of-care impunity are [not](#) free market heroes. They are [classic crony](#) prototypes, [dependent](#) on [special](#) government privilege and advantage to operate and succeed.

Fifth, the Internet platforms’ special [impunity](#) means they can’t lose because they can capitalize revenues and socialize costs. Only with no-duty-of-care can they non-transparently capitalize their impunity advantages to grow revenues faster in disruptive ways that their competitors cannot ethically or legally grow revenues. Only they can non-transparently socialize the costs — of harming people and facilitating illegal activity — by dumping them onto victims, competitors, the government, and taxpayers.

A Corporate Responsibility Is to Protect Stakeholders and the Free Market’s Invisible Hand

In 2019, the Business Roundtable of top CEOs “[redefined the purpose of a corporation](#),” and “[outlined a modern standard for corporate responsibility](#)” in a public [commitment](#) to deliver value for all their “essential” stakeholders: customers, employees, suppliers, communities and shareholders.

The Business Roundtable effectively has [defined](#) “stakeholder capitalism” as people focused, which aligns closely with society’s people focused, duty-of-care standard.

The “invisible hand” of a free market economy works and [thrives automatically](#) because it is others-driven and freedom-with-responsibility-based. Voluntary supply self-interests are responsible for finding, matching, and satisfying the voluntary demand self-interests of others.

This is in stark contrast to the apparent “[invisible fist](#)” of Internet platforms empowered by Section 230’s [impunity](#) that best characterizes Internet [gatekeepers](#) and pure shareholder-primacy capitalism, and that optimizes for Internet platform shareholders at the [expense](#) of everyone else.

Winner-Take-All Internet Platform Dynamics Weaken Economic Growth

One of the biggest unanswered questions about the U.S. economy is why U.S. economic growth has [lagged](#) significantly over the last sixteen years from previous decades?

A contributing factor apparently becomes clear in comparing [Fortune 500](#) revenue data and BEA economic [statistics](#), which expose the extreme disparity in long-term revenue growth performance of non-Internet companies and Internet gatekeeper platforms with Section 230 impunity.

Gatekeeper Growth Disparity: From 2012-2019: 497 [Fortune 500](#) companies (i.e., the Fortune 500 minus Amazon, Google & Facebook,) grew revenues **14.6%**; current [USGDP](#) grew output **32.3%**; and just Amazon + Google + Facebook grew revenues **341%**.

The Winner-Take-All Economic Effect: From 2012-2019: these three Internet platforms, Amazon + Google + Facebook, outgrew the economy (current [USGDP](#)) by **956%** and outgrew the other 497 [Fortune 500](#) companies by **2,235%**.

No Thriving U.S. Economy: From 2012-2019: Fortune “497” [companies’](#) revenue growth lagged: [USGDP](#) output growth by **-55%**; and the three Internet platforms’ revenue growth by **-95.8%**.

This data spotlights the evident winner-take-all, negative-sum economic reality of Section 230’s gatekeeper, crony capitalism that holds back the economy from thriving and serving all Americans.

The Internet Imperative Is Protect People from Online Harms

Since everyone, everywhere, conducts everything online, an Internet loophole facilitating criminal impunity online, is becoming an increasingly severe threat to public safety, civil society, and free market economic prosperity everywhere.

The best way to protect the unprotected is to restore a legal duty-of-care to the platforms, reestablishing the most basic protection of people and the essential legal Golden Rule ethic undergirding our justice system.

A bipartisan amending of Section 230 to protect the unprotected from harms online is a common good, good government, and good business.

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