

## NTIA Asks FCC to Broaden Internet Platforms' Liability for Third-Party Content and Moderation Efforts

July 30, 2020

In a [petition for rulemaking](#) filed on July 27, the US Department of Commerce's [National Telecommunications and Information Administration](#) has asked the [Federal Communications Commission](#) to adopt new rules interpreting Section 230 of the Communications Decency Act to open internet platforms to potential liability for third-party content on their sites and for their efforts to moderate third-party content. The petition was filed as required by President Donald Trump's [May 28 executive order on social media](#).

In addition to social media, the proposed rules could affect a wide range of companies that depend on the internet for their businesses, including review sites, gaming sites and companies that rely on product descriptions provided by their suppliers.

Under current law, internet platforms generally are immune from liability for third-party content on their platforms and for their moderation efforts. They also are largely free of direct regulation by the federal government. If the proposed rules are adopted, they would impose sweeping changes in how Section 230 is interpreted that would affect any company that uses third-party content on the internet and also would subject many internet platforms to new regulatory requirements that could affect their businesses. The specific proposals include the following:

- Protection against liability for third-party content would be available only when an interactive computer service (such as a website or app) failed to remove information provided by a third party. Under the proposed rules, a provider that solicits content, chooses third-party content for its site or promotes third-party content to its users would lose its immunity. This could mean that there would be no immunity for advertising or for content that was recommended to users through a preference engine
- Moderation would include restricting access to or the availability of content and barring users from posting temporarily or permanently. Warnings placed on user-generated content would be treated as content generated by the internet platform, rather than moderation, and would not be within the protections of Section 230
- Internet platforms could be immune from liability for moderation decisions only for content that is sexual, excessively violent, harassing or "similar in type" to those categories of content. Moderation for any other reasons – regardless of how objectionable the content might be – would not be immune from liability
- Internet platforms would be immune from liability for moderation decisions only if those decisions (a) follow published rules that are stated plainly and "with particularity;" (b) are based on an "objectively reasoned belief" that the content falls within the categories approved by the FCC; (c) are applied consistently and not deceptively or pretextually; and (d) are communicated to the affected party promptly, with an explanation of the reason for the action and an opportunity to respond
- Internet platforms that use moderation would be required to provide detailed public disclosures of their policies, subject to penalties from the FCC for failure to do so

Taken together, these rules would impose significant new costs and risks for companies that use third-party content; that allow users to post comments, reviews or other content of their own; that curate content in any way, potentially including systems that reveal or hide content based on user preferences; or that accept advertising. Equally important, the proposed rules would subject internet platforms and content providers to the FCC's jurisdiction for the first time through the rule requiring public disclosure of

moderation policies.

The executive order also asked for the Federal Trade Commission to review whether social media companies' treatment of user content violated rules against unfair trade practices. The FTC has not acted on that request.

The FCC has not yet issued a notice setting dates for comments to be filed, but it is likely that the initial deadline will be in late August or early September and action on the petition is not likely for several months or more. If, based on the comments, the FCC determines that the rules are warranted, it would then issue a formal notice of proposed rulemaking before adopting the rules. As of this writing, three of the five FCC commissioners have issued statements on the petition, with Republican Commissioner Brendan [Carr](#) welcoming the petition and Democratic Commissioners Jessica [Rosenworcel](#) and Geoffrey [Starks](#) opposing adopting rules.

A more detailed analysis of the legal and policy issues raised by the petition will follow.

Cooley lawyers can assist in understanding the proposals in the petition for rulemaking and in preparing responses to the petition at the FCC and elsewhere in the federal government.

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## Key Contacts

J.G. Harrington Washington, DC	jgharrington@cooley.com +1 202 776 2818
Robert M. McDowell Washington, DC	rmcdowell@cooley.com +1 202 842 7862

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