No. 21-1333

IN THE

Supreme Court of the United States

REYNALDO GONZALEZ, *et al.*,
Petitioners,

v.

GOOGLE LLC,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

BRIEF OF *AMICI CURIAE* REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND THE MEDIA LAW RESOURCE CENTER IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*[1]

Amici are the Reporters Committee for Freedom of the Press ("Reporters Committee") and the Media Law Resource Center ("MLRC").

The Reporters Committee is an unincorporated nonprofit association founded by leading journalists and media lawyers in 1970, when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, *amicus curiae* support, and other legal resources to protect the newsgathering and publication rights of journalists around the country.

The MLRC is a non-profit professional association for content providers in all media, and for their defense lawyers, providing a wide range of resources on media and content law, as well as policy issues. These include news and analysis of legal, legislative and regulatory developments; litigation resources and practice guides; and national and international media law conferences and meetings. The MLRC also works with its membership to respond to legislative and policy proposals, and speaks to the press and public on media law and First Amendment issues. It counts as members roughly 140 media companies, including newspaper, magazine and book publishers, TV and radio broadcasters, and digital

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[1] Pursuant to Rule 37.6, counsel for *amici curiae* authored this brief in whole; no party's counsel authored, in whole or in part, this brief; and no person or entity other than *amici* and its counsel contributed monetarily to preparing or submitting this brief. The parties to this action have granted blanket consent to the filing of *amicus curiae* briefs in this case.

platforms, and over 200 law firms working in the media law field. The MLRC was founded in 1980 by leading American publishers and broadcasters to assist in defending and protecting free press rights under the First Amendment.

Amici have a strong interest in ensuring that legal protections limiting liability for the hosts of third-party content are construed in a manner that fosters robust public discourse on the internet, including on news media websites and on the platforms where many readers encounter journalism today. Accordingly, *amici* respectfully submit this brief to urge the Court to confirm that these measures continue to promote important and valuable speech activities online, especially the dissemination of the kind of newsworthy information that inevitably would be shunned as too risky if liability for third-party content was expanded in the manner urged by Petitioners.

SUMMARY OF THE ARGUMENT

Section 230 of the Communications Decency Act, 47 U.S.C. § 230, was designed to "promote the continued development of the internet" while protecting "the vibrant and competitive free market" of ideas that exists online. 47 U.S.C. § 230(b); *see also* 141 Cong. Rec. 22045 (1995) (Statement of Rep. Cox) ("[W]e embrace this new technology [meaning the internet], we welcome the opportunity for education and political discourse that it offers for all of us."). It does so by tempering the incentive that online platforms would otherwise face to remove valuable speech—including lawful, public interest journalism that could be perceived as controversial based on its

subject matter—out of fear that they will be subject to burdensome litigation for hosting that speech.

The protections that Section 230 provides for the free flow of information online are vital to the work of journalists and news organizations around the country. For example, the statute ensures that reporting on breaking news can easily be disseminated in real time, or close to real time. It enables broad distribution of reporting on terrorism, public health, national emergencies, and other similar topics online across a variety of platforms. And it protects the free exchange of ideas and information on the online platforms on which journalists rely to identify sources, investigate stories, provide accurate coverage on events of public concern, and engage personally with their audiences.

Petitioners' interpretation of the statute would undermine these benefits and the statutory framework that Congress sought to establish with Section 230. Their proposed distinction between content recommendations and other modes of displaying third party content has no limiting principle and would erode the bright line Section 230 was intended to draw.

This Court should reject such a reading of Section 230 and affirm the decision below.

ARGUMENT

I. Section 230 Provides Important Benefits to Journalists and News Organizations.

In the past three decades, the internet has not only transformed the way people communicate, share ideas, and do business, but it has also become an essential tool for journalists to gather facts, meet and

communicate with sources, and report the news. It has provided journalists with necessary tools to reach an ever-widening audience and helped ensure that people have accurate, up-to-date information, especially at times when access to that information is critical to public safety.

In passing Section 230, Congress recognized the importance of the internet, then still in its nascency, in creating a robust free market for the exchange of ideas. *See* 47 U.S.C. §§ 230(a)(4), (b)(2); *see also* 141 Cong. Rec. 22045 (1995) (Statement of Rep. Cox). Section 230 promotes the free flow of valuable information online by carefully calibrating the incentives faced by platforms that host user-generated content. Absent Section 230's protections, platforms would likely react to the fear of liability by aggressively removing content that may create litigation risk, including through pre-screening.

Removing that zone of protection for online platforms would limit the utility of those platforms for both gathering and reporting news in at least three ways. First, Section 230 provides an incentive for platforms to host third-party content that is generated in real-time, or close to real-time, which is essential for journalists covering breaking news. Second, journalists and news organizations use the platforms to amplify reporting on a range of topics, including those that may be regarded as controversial—for example, detailed reporting on a crime or on the activities of an extremist organization—and that could give rise to litigation against any platform that hosts this content. Third, under Section 230, online platforms have become essential tools for journalists and news organizations to identify sources and stories and to communicate with readers.

A. Section 230 Facilitates the Gathering and Reporting of Breaking News.

Petitioners' interpretation of Section 230 would create an incentive for many social media platforms to pre-screen content, which could significantly impair breaking news coverage. *See* Dan Patterson, *What Is 'Section 230' and Why Do Many Lawmakers Want to Repeal It?*, CBS News (Dec. 16, 2020), https://www.cbsnews.com/news/what-is-section-230-and-why-do-so-many-lawmakers-want-to-repeal-it ("[The Electronic Frontier Foundation's David] Greene said companies like YouTube and Facebook would have to pre-screen all content or evaluate, pre-approve and micromanage users.").

When reporting on breaking news, journalists routinely rely on first-person accounts of unfolding events to understand what is happening on the ground and document the first few minutes before reporters can arrive on the scene. These on-the-scene accounts often provide both the public and news organizations with the first signs of a major event and ensure that the public has access to real-time information before reporters arrive to layer the coverage with more details. *See* Jackie Spinner, *How Journalists Are Using Social Media Monitoring to Support Local News Coverage*, Colum. Journalism Rev. (Oct. 13, 2015), https://www.cjr.org/united_states_project/social_media_geotagging_local_journalists.php (describing how journalists "listen[]" to social media to identify sources during breaking news events, especially when scenes are inaccessible). And, journalists rely on a range of online platforms to disseminate and amplify their breaking news reporting.

The importance of on-the-ground information is particularly acute in the first few minutes of a natural disaster or other tragedy. Online posts are essential to coordinating relief efforts; as is permitting the media to report on such disasters in close to real-time. *See, e.g.*, Pete Vernon, *The Media Today: Social Media and the Storm*, Colum. Journalism Rev. (Aug. 29, 2017), https://www.cjr.org/the_media_today/hurricane-harvey-social-media.php (explaining how social media impacted reporting and emergency relief efforts during Hurricane Harvey). Similarly, the first reports of a mass shooting often come from social media posts shared by people in the affected area. Both journalists and the public rely on these posts to notify the public of danger and to understand what happened in the first few minutes after shots have been fired. *See, e.g.*, Tyson Wheatley, *Tragedy Caught on Camera*, CNN Anderson Cooper Blog 360 (April 16, 2007), http://www.cnn.com/CNN/Programs/anderson.cooper.360/blog/2007/04/tragedy-caught-on-camera.html (describing how a Virginia Tech graduate student's video of the Virginia Tech shooting sent to CNN's "I-Report" was aired on CNN within minutes); UVA Police Department (@UVAPolice), Twitter (Nov. 14, 2022 7:28 AM), https://twitter.com/UVAPolice/status/1592132451207639040?s=20&t=nozRzCNreJyXG15EaWMlDQ (cautioning students to shelter in place during manhunt for suspect wanted in connection with the shooting deaths of three University of Virginia football players).

The same is true in other emergency situations. During the 2021 Astroworld concert in Houston, Texas, for example, concertgoers and journalists relied on posts from attendees to disseminate infor-

mation quickly when a crowd lost control and began rushing toward the stage, ultimately leading to the deaths of ten people and injuring dozens more. Both before and during the tragedy, attendees documented the scene, posting images and videos of the event to various online platforms. Though often graphic, these posts were essential to establish a timeline of events leading up to the tragedy and to document the efforts of concertgoers and medical crew to stop the ongoing concert and help people who were injured. *See* Eileen AJ Connelly & Ben Blanchet, *Astroworld Medics Were 'Overwhelmed' by Incident that Left 8 Dead at Concert*, N.Y. Post (Nov. 6, 2021), https://nypost.com/2021/11/06/astroworld-medics-were-overwhelmed-by-incident-that-left-8-dead-at-concert; EJ Dickson et al., *'People Are Dying': Witnesses Describe the Horror of Astroworld Tragedy in Houston*, Rolling Stone (Nov. 6, 2021), https://www.rollingstone.com/music/music-news/eyewitnesses-astroworld-houston-travis-scott-1254208. These eyewitness accounts also formed the basis of several stories detailing the failure of concert organizers to prepare for crowds and ensure adequate security, and ultimately, of both state and federal investigations into the causes of the tragedy. *See* Marisa Cramer, *Congressional Committee to Investigate Astroworld Deaths*, N.Y. Times (Dec. 22, 2021), https://www.nytimes.com/2021/12/22/us/astroworld-live-nation-investigation.html; J. David Goodman & Maria Jimenez Moya, *'No Way Out': A Sudden Life-and-Death Struggle at a Houston Concert*, N.Y. Times (Nov. 6, 2021), https://www.nytimes.com/2021/11/06/us/travis-scott-crowd-surge.html; *see also* Letter from Rep. Carolyn B. Maloney, Chairwoman, Comm. on Oversight and Reform, to Michael Rapino, President and Chief Execu-

tive Officer, Live Nation Entertainment, Inc. (Dec. 22, 2021) (noting that first-hand reports, relayed in news articles, "raise serious concerns about whether [Live Nation] took adequate steps to ensure the safety of the 50,000 concertgoers"), https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/2021-12-22.CBM%20Comer%20et%20al.%20to%20Rapino-Live%20Nation%20re%20Astroworld.pdf.

On each of these footings, Section 230 plays a key-role in protecting the real-time flow of news to—and from—members of the public. Without it, platforms would predictably respond to the threat of liability by refusing to display content that has not already been scrutinized within an inch of its life for litigation risk—a pre-screening regime fundamentally incompatible with the insight that "'news' is not even 'news' if it is not timely, that is, immediate and contemporaneous." *Courthouse News Serv. v. Planet*, 947 F.3d 581, 594 (9th Cir. 2020). In heading off that prospect, Congress took an important step to protect journalists' ability to gather and disseminate information on newsworthy events in real-time on online platforms.

B. Absent Section 230's Protections, Online Platforms Will Have an Incentive to Remove Public Interest News Reporting on Crime, Terrorism, or Other Topics That Could Invite Lawsuits.

Underpinning Section 230 is the understanding that, in the absence of its broad protections, online platforms will have a strong incentive to pull valuable content because the sheer volume of content

online makes it difficult for providers to separate acceptable speech from content that violates their policies or raises the risk of liability. Indeed, it is already difficult for platforms to distinguish between a terrorist recruiting video and a news report on that video when moderating content at scale, a dynamic that leads to the removal of essential journalism. *See* Mikael Thalen, *YouTube Is Cracking Down on Independent Journalists Who Covered the Capitol Riot*, Daily Dot (Feb. 3, 2021), https://www.dailydot.com/debug/youtube-removes-capitol-riot-videos. But undermining Section 230's protections would exacerbate the dynamic; under Petitioners' reading of Section 230, any failure to remove content related to terrorism could give rise to a risk of liability, sharpening the incentives that online platforms would have to err on the side of removal and take down reporting. Although news organizations would still cover these kinds of stories in their own publications, members of the public who get their news from online platforms may miss important coverage, and the reach of that coverage would be unduly limited.

Indeed, reporters covering issues related to domestic and international terrorism often rely on statements from extremist groups to understand and report on threats to public safety posed by these groups. Journalists covering the 2015 shooting of African American parishioners in Charleston, South Carolina, for example, quoted threatening statements made by the alleged perpetrator on a white supremacist website as part of their reporting on the event. Frances Robles, *Dylann Roof Photos and a Manifesto Are Posted on Website*, N.Y. Times (June 20, 2015), https://www.nytimes.com/2015/06/21/us/dylann-storm-roof-photos-website-charleston-

church-shooting.html (quoting the suspect's blog when explaining what happened in Charleston and why); *see also Dylann Roof's Journal* at 12, Post & Courier (Dec. 9, 2016), https://www.postandcourier.com/dylann-roofs-journal/pdf_c5f6550c-be72-11e6-b869-7bdf860326f5.html (publishing portions of the perpetrator's diary as part of ongoing reporting).

Reporters also rely on interviews with extremists in terrorist organizations to understand and accurately report on the organization's activities. In 1998, for example, ABC News interviewed Osama bin Laden and broadcast his statements expressing his belief that Americans were "thieves" and "terrorists" as part of a larger report on Al Qaeda and the threat it posed to national security. *Nightline: Osama bin Laden: "The Most Dangerous Man You've Never Heard Of"*, https://youtu.be/zDq9tMu1Jm0 (last visited Jan. 18, 2023) (ABC News television broadcast June 10, 1998). More recently, NPR and other organizations have interviewed members of the Taliban to understand the organization's efforts to govern Afghanistan after Kabul fell in August 2021. *See* Steve Inskeep & Fazelminallah Qazizai, *We Visited a Taliban Leader's Compound to Examine His Vision for Afghanistan*, NPR (Aug. 5, 2022), https://www.npr.org/2022/08/05/1115388675/taliban-afghanistan-leader-us-relationship (documenting an interview with a Taliban official, including his views of the United States); *see also* Jon Lee Anderson, *The Taliban Confront the Realities of Power*, New Yorker (Feb. 21, 2022), https://www.newyorker.com/magazine/2022/02/28/the-taliban-confront-the-realities-of-power-afghanistan (interviewing Taliban leadership, including the "former head of suicide bombers," following their takeover of Kabul).

By giving platforms breathing room to moderate such content with nuance—for example, to retain news coverage of a mass shooting while removing content posted by the shooter himself—Section 230 promotes the free flow of newsworthy information online. Petitioners' interpretation of Section 230 would incentivize platforms to err on the side of indiscriminately removing content, regardless of its value to the public, in order to avoid liability—to the detriment of both the press and the public it serves.

C. Section 230 Encourages Journalists and News Organizations to Interact with Their Audiences in New and Valuable Ways.

Open online platforms allow journalists to engage with audiences on issues of public concern, understand how users react to and engage with online reporting, and receive real-time feedback from communities and users.

For example, online platforms allow journalists to reference hashtags, create and interact with online "threads," initiate user polls, go "live," respond to questions on air, and otherwise interact directly with members of the public in a variety of ways. *See, e.g.*, PBSNewsHour (@NewsHour), Twitter (Mar. 27, 2020, 2:01 PM), https://twitter.com/NewsHour/status/1243598919910789121 (featuring live video of journalists addressing reader questions about the coronavirus aid bill using the hashtag #AskNewsHour). These tools enable journalists to take advantage of mass participation in online platforms, expand their reach, and respond to the wishes and questions of the public. *See, e.g.*, Felippe Rodrigues, *How the Texas Tribune Uses Tweetstorms and Other Social*

Media Strategies to Drive Audience Engagement, Storybench (Aug. 15, 2017), https://www.storybench.org /how-the-texas-tribune-uses-tweetstorms-to-drive-audience-engagement (describing how an innovative nonprofit news website uses social media to communicate with its audience); Benjamin Mullin, *How 4 News Organizations Are Using Facebook Live to Reach Broader Audiences*, Poynter (Mar. 31, 2016), https://www.poynter.org/tech-tools/2016/how-4-news-organizations-are-using-facebook-live-to-reach-broader-audiences (discussing how large and small news organizations have used live streaming to "engage their audiences and extend their social reach"). In the absence of robust, clear protections for user-generated content, including in the comments section of news sites, news organizations would have an incentive to restrict or do away with these avenues for user engagement. *See* Jack M. Balkin, *The Future of Free Expression in a Digital Age*, 36 Pepp. L. Rev. 427, 433-36 (2009).

Additionally, the culture of online civic participation fostered by Section 230 encourages readers to hold journalists accountable by fact-checking stories in real-time through online comments. Indeed, the ease with which users can access online comments sections and interact with journalists over social media means that users can, and often do, use these tools to correct errors in news stories and ensure that reports are accurate. *See, e.g.*, Natalie Jomini Stroud et al., *Comment Section Survey Across 20 News Sites*, University of Texas at Austin Center for Media Engagement Moody College of Communication (Jan. 12, 2017), https://mediaengagement.org/research/comment-section-survey-across-20-news-sites (re-

porting the findings of a 12,000 plus-person study regarding comment sections on twenty different news sites, including that readers commented to "correct inaccuracies or misinformation," to "take part in the debate," to "add information,' and/or to "balance the discussion"); Christie Aschwanden, *We Asked 8,500 Internet Commenters Why They Do What They Do*, FiveThirtyEight (Nov. 28, 2016) https://fivethirtyeight.com/features/we-asked-8500-internet-commenters-why-they-do-what-they-do (study of online commenters reporting that the most popular self-identified reason for posting was to correct an error).

Journalists, in turn, have reported that robust public commentary provides additional incentives to ensure their work is "bullet-proof," as the public at large serves as a watchdog to ensure the accuracy of news reports. *See* Jane B. Singer & Ian Ashman, *"Comment Is Free, but Facts Are Sacred": User-Generated Content and Ethical Constructs at the Guardian*, 24 J. Mass Media Ethics 3, 14 (2009) (reporting on an ethnographic case study of *Guardian* journalists assessing their relationship with user-generated content, noting that "[k]nowing their work would be open to user comment made journalists pay extra attention to getting it right in the first place").

In addition to fact-checking, readers have relied on the comments section and social media to engage with reporters and other members of the public on the substance of a particular story. Often, an article itself "represent[s] only the beginning of the conversation." Tyrone Beason, *In Online Commenting, a Community of Strangers Calls It As They See It*, Seattle Times (May 16, 2011), https://www.seattletimes.com/pacific-nw-magazine/in-online-commenting-a-community-of-

strangers-calls-it-as-they-see-it. Online platforms allow readers to "have just as much of a voice as the reporter" and to directly engage on topics of public concern, whether through the comments section of an article or through a news organization's social media page. *Id.*; *see also, e.g.*, Sara Morrison, *The Future of Comments*, Nieman Reps. (Feb. 2, 2017), https://niemanreports.org/articles/the-future-of-comments (discussing the relationship between journalists and comment sections and various emerging technologies that news organizations are exploring to increase reader engagement and participation).

Weakening Section 230's protections would create a different incentive. Platforms would be less willing to host interactions between journalists and their audiences and news organizations likely would be less inclined to host reader or viewer comments. Indeed, this dynamic was on display when the European Court of Human Rights allowed a news organization to be held liable for allegedly defamatory remarks posted by an anonymous online user in its comment sections. *Delfi AS v Estonia*, No. 64569/09, 2015-II Eur. Ct. H.R. 319. This decision has been heavily criticized because of the significant risks it poses to free speech. *See* Mark Scott, *Estonian News Site Can Be Held Liable for Defamatory Comments, Court Rules*, N.Y. Times (June 17, 2015), https://www.nytimes.com/2015/06/18/business/media/estonian-news-site-can-be-held-liable-for-defamatory-comments-court-rules.html (noting that the decision "has raised concerns for free-speech advocates who fear that newspapers' ability to publish information may be hampered if they are held responsible for all comments made on their sites"); Ronan Ó. Fathaigh & Dirk Voorhoof, *A Review of the European Court's Freedom of Expression Cases in*

2013, Colum. Univ. Global Freedom of Expression (May 6, 2014), https://globalfreedomofexpression.columbia.edu/publications/a-review-of-the-european-courts-freedom-of-expression-cases-in-2013 (explaining that "[t]he importance of the *Delfi* opinion cannot be overstated" and that "there has been near-universal academic criticism of *Delfi* and its consequence for third-party liability"). Section 230 is designed to avoid just that risk.

II. Petitioners' Interpretation of Section 230 Is Unsupported by Its Text and Would Hinder Core Journalistic Activities.

The distinction proposed by Petitioners and their *amici*—between online platforms independently disseminating information by making recommendations, on the one hand, and platforms simply hosting or providing tools that allow users to locate third-party content on the other—is illusory at best. *See* Pet. Br. at 33–42. Even the most rudimentary system for organizing and displaying third-party content involves design choices that make certain content more prominent than other content. These systems all reflect "judgment[s] rooted in the platform's own views about the sorts of content and viewpoints that are valuable and appropriate for dissemination on its site." *NetChoice, LLC v. Att'y General, State of Fla.*, 34 F.4th 1196, 1210 (11th Cir. 2022) (holding that social media websites engage in protected First Amendment activities when they moderate content on their platforms).

Under Petitioners' proposed rule, then, any system for displaying or allowing users to easily find third-party content, no matter how "neutral," will be vulnerable to the allegation that it constitutes the

platform's recommendation of particular speech rather than merely the "hosting" of third-party content. As a result, platforms will naturally be incentivized to remove broad categories of user-generated content that are perceived as particularly inviting to lawsuits.[2]

Consequently, Petitioners' reading would open the door to a flood of meritless litigation against online platforms. *See generally* Brief of Amici Curiae Center for Democracy & Technology, et al., in Support of Petitioner, *Twitter v. Taamneh*, No. 21-1496 (U.S. Dec. 5, 2022). Even if these lawsuits ultimately fail under substantive First Amendment law, *see, e.g.*, *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 258 (1974), platforms will still have to expend resources to defend against them, and are therefore more likely to preemptively restrict user-generated content in order to avoid the burden of litigation.

In addition, Petitioners' interpretation of Section 230 as distinguishing between publishers and distributors, drawn from traditional defamation law, poses the same danger.

True enough, the First Amendment and the law of defamation prevent a distributor from being held liable—even for the distribution of concededly unprotected speech—without a showing of knowledge.

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[2] Indeed, "websites with fewer resources or less public or advertiser pressure might veer in the opposite direction: avoiding liability by refusing to sort, filter, or take down any content." Respondent's Br. at 53. This would make the internet less legible to journalists who rely on online sources to research stories and contribute to the proliferation of inaccurate or false information by reducing websites' efforts to foreground trusted sources.

Otherwise, "[i]f the contents of bookshops and periodical stands were restricted to materials of which their proprietors had made an inspection, they might be depleted indeed." *Smith v. California*, 361 U.S. 147, 153 (1959)); *compare with Zeran v. America Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997) (noting that "publishers," within the meaning of defamation law, could "be held liable for defamatory statements contained in their works even absent proof that they had specific knowledge of the statement's inclusion.").

But hinging Section 230's protections on notice, as Petitioners urge, does not solve the problem *Smith* identified—or that Congress intended to resolve. Online platforms are as different in scale from a bookseller as a bookseller is from a magazine. *See Zeran*, 129 F.3d at 333 (noting that even liability with notice "would create an impossible burden in the Internet context"). What is more, a line drawn at notice would be of little help filtering out meritless claims in those settings where knowledge is not a sufficient *mens rea* to distinguish protected and unprotected speech. *Cf. Rice v. Paladin Enters., Inc.*, 128 F.3d 233, 266 (4th Cir. 1997) (noting that the First Amendment would bar liability for knowing distribution of depictions of criminal activity where the news media's intent is to inform the public rather than "facilitate repetition of those crimes"). The predictable result of Petitioners' reading, then, would be the same incentive to remove valuable speech—including lawful public-interest reporting—that Section 230 was intended to address.

Nothing in the text or structure of the statute requires Petitioners' unreasonable result. Congress passed Section 230 to "promote the continued development of the internet," and to "preserve the vibrant

and competitive free market" that had already begun to emerge at the time. 47 U.S.C. § 230(b); *see also* 47 U.S.C. § 230(a) (recognizing the promise of the internet to provide "a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity"). In light of this stated purpose, the statutory text "is general" and broadly shields providers and users from being treated as the publisher or speaker for the purpose of imposing civil liability for content generated by third parties. *See Chi. Lawyers' Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F.3d 666, 671 (7th Cir. 2008).

Thus, Section 230's prohibition against treating a provider or user of an online platform "as the publisher . . . of any information provided by another information content provider" is not tied to or rooted in the distinctions drawn in defamation law. Rather, those terms are most appropriately understood to reflect their ordinary public meaning at the time the statute was enacted. *See, e.g.*, *Force v. Facebook, Inc.*, 934 F.3d 53, 65, 65 n.19 (2d Cir. 2019) (looking to the ordinary meaning of "publisher" in Section 230 because "when a term goes undefined in a statute, we give the term its ordinary meaning" (quoting *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566 (2012)); *Klayman v. Zuckerberg*, 753 F.3d 1354, 1359 (D.C. Cir. 2014) (similarly applying ordinary meaning of "publisher"); *Fed. Trade Comm'n v. LeadClick Media, Inc.*, 838 F.3d 158, 175 (2d Cir. 2016) (same); *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1102 (9th Cir. 2009) (applying the ordinary, dictionary meaning of "publisher" and noting that this result is "rooted in the common sense and common definition of what a publisher does"); *cf. Zeran*, 129 F.3d at 331-34 (noting that, even against the backdrop of

traditional defamation law, Section 230 immunizes online platforms when they exercise editorial and other self-regulatory functions). That reading makes sense of the statutory text and gives effect to its purpose, while avoiding the kind of uncertainty that would incentivize online platforms to remove content by, and that is valuable to, members of the traditional news media.

In sum, drawing the boundaries of Section 230 at "recommendations" has no natural limiting principle that would preserve the speech-protective function of the statute. This Court should reject the distinction and preserve Section 230's benefits for all those who depend on the free flow of information online, including the press.

CONCLUSION

For the reasons set forth above, the judgment of the court below should be affirmed.

Respectfully submitted,

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