

United States Senate

November 1, 2019

The Honorable Robert Lighthizer
U.S. Trade Representative
Office of the U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Lighthizer:

I appreciate the progress President Trump has made in ensuring our trade deals benefit Americans workers, ranchers, and farmers, and further strengthen our economy. American trade deals should reflect settled American law, values, and customs. They should not contain provisions that are the subject of ongoing debate. That is what I ask that you remove Article 19.17—an Article that mirrors Section 230 of the Communications Decency Act—from the United States-Mexico-Canada Agreement (USMCA). I also ask that you remove similar language: Article 18, Section 2 and 3 in the U.S.-Japan Trade Agreement, and refrain from including such language in future trade agreements. With members of both the Senate and House of Representatives seriously considering whether to amend or eliminate Section 230's grant of immunity because big tech is not living up to its end of the legislative bargain, I believe that enshrining it in the Agreement would be a mistake.

Section 230 of the Communications Decency Act provides technology companies with immunity enjoyed by no other industry: a near-blanket legal immunity for the third-party content that they host on their platforms. Congress granted this immunity when the internet was still young and as part of a bargain to aid the developing industry. In exchange for this immunity, however, Congress expected that tech companies would carry others' speech without favor to any specific viewpoint, and would keep defamatory and other unlawful speech off their platforms.

That bargain no longer seems to hold. Big tech companies have become some of the most powerful censors the world has ever seen. They routinely censor lawful—overwhelmingly conservative—speech with which they disagree. From Twitter locking the account of Senate Majority Leader Mitch McConnell's campaign to YouTube demonetizing a conservative comedian's account following pressure from the left, the examples of censorship are as disturbing as they are numerous.

That is why elected officials are increasingly advocating for Section 230's revision or repeal. I have repeatedly explained that the American people should not have to subsidize the biggest companies on earth to operate platforms that exclude the views of their fellow citizens. Senator Hawley has similarly pushed for changes to this law. Even Speaker Pelosi has said that Section 230 is "a gift to [big tech companies] and I don't think that they are treating it with the respect that they should, and so I think that that could be a question mark and in jeopardy. . . . I do think

that for the privilege of 230, there has to be a bigger sense of responsibility on it. And it is not out of the question that that could be removed.”

Given this growing willingness to hold big tech companies to the same standards as other content publishers, it is inappropriate to commit the United States in the USMCA, the U.S.-Japan Trade Agreement, or any other trade agreement, to continuing to provide special protections to big tech. Yet that is exactly what the inclusion of language mirroring Section 230 does. It commits the United States to staying the course with a policy that is not working for the American people. Indeed, if this language remains in these trade agreements, elected officials will face a terrible dilemma: either abandon efforts to hold big tech companies accountable, or revise Section 230 and put the United States in breach.

There is a better way. I request that you remove Article 19.17 from the USMCA, remove Article 18, Section 2 and 3 in the U.S.-Japan Trade Agreement, and refrain from including similar language in future trade agreements.

Sincerely,



Ted Cruz
United States Senate