

The six words that created America's Internet injustice system.

By [Scott Cleland](#)

How could our constitution-premised country, that has [prioritized](#), [cherished](#), and [established](#) justice from its creation, two centuries later unwittingly create, justify, and sustain the exact opposite -- a universal anti-constitution Internet injustice system for the 21st century?

In 1996, Congress never intended to create a permanent 21st Century America, Internet injustice system, but it has since 1997, via [six words](#): “*unfettered by Federal and State regulation.*”

A. How could this happen?

In 1996, the Internet had bulletin board functionality, dial-up speed, and was [used](#) by early adopters 30 minutes a *month*. Nevertheless, based on that non-expertise and inexperience, Congress passed [Section 230](#) of the 1996 [Communications Decency Act](#), which today's Internet interests idolize as “*The 26 words that created the Internet*” and the “*Digital Magna Carta.*”

In 1996, Congress [declared](#) in Section 230: “*It is the policy of the United States... to preserve the vibrant and competitive free market that presently exists for the [Internet](#) and other [interactive computer services](#), unfettered by Federal or [State](#) regulation.*”

‘[Unfettered](#)’ means “*not controlled or restricted.*” It is the most extreme adjective for how good government should not govern. Government's primary reason and purpose for being is to protect people from what they can't protect against themselves, i.e., control and restrict the outcomes of security threats and risks like attacks, terrorism, crime, fire, natural disasters, etc.

‘Unfettered’ in this context means prohibiting sovereignty, government, the Constitution, borders, courts, police, public safety, i.e., [anarchism](#); ‘unfettered’ also means the injustice of courts not adjudicating right/wrong, truth/lies, good/evil, and legal/illegal i.e., [amoralism](#). There is no justice in anarchism or amoralism, only injustice.

How could Section 230's U.S. Internet policy [six words](#): “*unfettered by Federal and State regulation,*” create America's Internet Injustice system? In 1997, the Fourth Circuit Court of Appeals' watershed [Zeran v. AOL Inc.](#) precedent explained: “*...Congress' desire to promote unfettered speech on the Internet must supersede conflicting common law causes of action.*”

Given that every other federal circuit has adopted [Zeran's](#) rationale for blanket immunity, Section 230 has become a universal judge-made-law for the 21st Century. Practically, the judicial branch has legislated ‘unfettered immunity’ i.e., impunity, for most online misdeeds for a quarter of a century. Over time, Federal courts have systemically universalized Section 230 as a judge-made law and procedure that grants negligent corporations a de facto [get-out-of-court-free-card](#) via routine dismissal of Section 230 cases before discovery.

B. What makes Section 230 America's Internet injustice system?

1. Section 230's primary premises create an Internet injustice system by default.

- a) **An ethos of Internet above all:** Internet special interests, elites, and Big-Tech have long idolized Section 230, e.g., “*The 26 words that created the Internet,*” The primary premise

presumption, and conceit of [Internet special interests](#) and [elites](#) concerning Section 230 is ‘Internet first.’ Practically, that means whatever is good for the Internet is good for the world, America, Americans, and the future. Unfortunately, the [evidence proves](#) otherwise.

- b) **Unfair and unjust by design.** [Section 230](#) is inherently a narcissistically, one-sided and one-way premise with extreme partiality and favoritism for Internet special interests’ above and before the well-being and safety interests of others. Simply, it perversely protects platforms from people by prohibiting protection of people from platforms online. Thus, best for technology isn’t best for humanity and best for profit isn’t best for people.
- c) **A fraudulent massive moral hazard?** Internet interests have long branded what Section 230 does for Internet platforms and services as ‘intermediary immunity’ even though those words are not found in Section 230. In addition, drafters of Section 230 benevolently named the provision “*Protection for “Good Samaritan” blocking and screening of offensive material.*” This signaled Congress’ virtuous intent and hope that under Section 230’s ‘intended incentives,’ there would be no “civil liability” for how an Internet service blocks or screens offensive material online, because they don’t risk liability. The problem with this thinking can be two-fold.

First, ‘intermediary immunity’ law intertwined with “*unfettered by Federal and State regulation*” policy transmogrifies into ‘unfettered intermediary impunity’ -- a very different and much more dangerous animal than ‘intermediary immunity’ for “Good Samaritans.” It is telling that the [Zeran v. AOL](#) precedent followed by all Federal Circuits sided with the notion that Section 230 proffered expansive or blanket immunity/impunity as Congress’ intent.

Second, a big red flag here is potential Section 230 misrepresentation. Those who represented Section 230 as only eliciting good Samaritan conduct and never bad Samaritan conduct because Section 230 titling and its proponents say so, may be potential willful blindness to bad Samaritans, people’s sin nature, and the clear moral hazard of Section 230’s premise of promoting good/justice, not bad and injustice in return for ‘unfettered intermediary impunity.’

A moral hazard is “*anytime a party in an agreement [like a platform relying on Section 230 ‘intermediary immunity]’ does not have to suffer the potential consequences of a risk, the likelihood of a moral hazard increases.*” In [other words](#), *a moral hazard can exist when a party to a contract [Section 230] can take risks without having to suffer consequences.*”

2. Section 230 has unjustly changed the Internet, America, and the U.S. Government.

As Section 230 increasingly changed into America’s default minimalist Internet legal system, the Internet, America, and Government, also increasingly changed in adverse ways that the 1996 Congress could never have imagined.

- a) *Internet’s change:* Today’ unfettered Internet enables everyone to conduct everything everywhere for life, work, and play empowered by platforms with billions of users, millions of applications, trillion-dollar valuations, and unfettered intermediary impunity to control others’ interactions, interrelations, and data for profit, power, and politics.

- b) *America's change:* The [evidence](#) shows that Section 230's policy of no Federal or State government online has made America, Americans, and minors worse off than before Section 230, i.e., endangered with minimal online responsibility, privacy, humanity, security, safety, stability, unity, civility, truth, integrity, justice, fairness, and decency.
- c) *U.S. Government change:* 5 Administrations, 14 Congresses and 17 Supreme Court Justices together have ignored their oaths to support the Constitution in neglecting to protect America, Americans, and minors from online attacks, crimes, and harms for 27 years! That's the opposite outcome expected of the U.S. Constitution and government.

3. Section 230 empowers mass-victimizations of Americans.

- a) **U.S. Internet unaccountability policy** has many imagining and advancing the dangerous notion that America's digital borders must allow an absolutist free flow of info into the U.S. akin to U.S. citizens freedom of speech. This reckless sovereignty surrender online unnecessarily enables out-of-control mass victimization of Americans by bad actors.
- b) **America's adversaries** and foreign-sponsored cybercriminals and terrorists are not U.S. citizens and have no First Amendment Rights, to kill, steal, exploit, defraud, or harm Americans or minors.
- c) **Cybercrime victimization is out-of-control**. Only .05% of cybercrime is [prosecuted](#). Americans [worry](#) most about cybercrimes. Most of the 100,000 Americans killed last year by Fentanyl poisoning died as a result of [illegal](#) online pharmacies. [23%](#) of Americans have suffered from cybercrime, [33%](#) from identity theft, and [64%](#) from theft of their data.
- d) **Cyberattack and cyber-harassment victimization is out-of-control**. [53%](#) of US adults have been cyberbullied or harassed. [90%](#) of U.S. organizations have been compromised by a cyberattack. [78%](#) of U.S. organizations have suffered from [ransomware](#).

4. Section 230 empowers misappropriation of others' liberties and rights.

- a) **Life security**. Prior to 1996, Americans had a well-established, offline right to privacy based on the Fourth Amendment and federal privacy statutes passed in [1974](#), [1974](#), [1978](#), [1984](#), [1986](#), [1988](#), [1994](#), and [1996](#).

Now most know they have lost all their privacy online and want it back per [Pew Research](#). Lose your privacy, lose your inalienable right to security to stay alive. Why? Privacy is integral to the natural human need for self-preservation. Privacy is akin to being able to hide from potential predatory harm. Without privacy, one can't protect one's security, identity, reputation, or dignity.

- b) **Lost liberty**. Humans enjoy liberty and rights, things do not. Offline a person is a living being: human, individual, citizen, voter, customer, or adult/minor with liberty. However, online a person tellingly is not a living thing: they are data, a user, a product, or an avatar without liberty.

People have lost their humanity online. Online we're dehumanized inanimate data products, commercial chattel that's bought and sold with impunity by [data brokers](#), without meaningful consent, rights, or recourse. We're indentured servants online, disenfranchised commercial captives of unfair, [one-sided](#), legal terms, indentures, and market power. Minors are prey for predators of all kinds, neglected and devalued with minimal age-appropriate protections.



- c) **Lost personal sovereignty.** Lose your [privacy](#). Lose your personal sovereignty to choose and [control](#) how you live your life. Online we no longer control our own destinies because [others](#) can largely control our virtual value, private data, and identity. And unfettered Big Tech [monopolies](#) largely control what we find, believe, see, say, and share online. U.S. Internet unaccountability policy also unnecessarily preempts citizens' State rights making Americans second-class citizens online via unnecessary Federal preemption of States' authority to protect their citizens from harm.

5. Section 230 spawns unjust standards.

- a) *Unjust legal Double Standard.* Offline, people are accountable to rule-of-law. Online, Internet technology and services are not accountable for the same conduct. This unfair double standard enables bad actors to game and arbitrage opposing accountability standards with impunity causing '*unequal justice under law.*'
- b) *Unequal access to Justice.* Offline the Constitution [guarantees](#) a citizen's access to justice. However online, Section 230 court precedents [regularly result](#) in plaintiffs' cases being immediately denied access to justice by losing via summary judgment before discovery.
- c) *Unfair civil duty of care Double Standard.* Offline, all Americans have a civil duty of care to reasonably protect others from foreseeable harm. Online, Internet technology and Internet services are de facto above the law and privileged with no civil duty of care.
- d) *Unequal Justice under the law.* U.S. policy inhumanely values and protects technology over humanity and profit over people. It unsafely grants technology [impunity](#) to harm people. It unjustly disenfranchises people without their consent by empowering technology to govern and control people sans rights, due process, or access to justice.
- e) *Unjust Constitutional free speech Double Standard of limited speech offline but unlimited speech online.* To protect people from harm, offline the Supreme Court [rules](#) which types of speech are harmful and not protected by the First Amendment. Online, the Supreme Court isn't protecting people from harm in enabling online speech ruled harmful offline.

CONCLUSION: What solves Section 230's U.S. Internet injustice system?

Section 230 is ancient in Internet years. Section 230's injustice system is regress to a primitive, pre-justice time when might was right, and people did not have rights, freedom, or equality.

[Reason](#) and the [evidence](#) expose Section 230 as indefensible, irreformable, and unsustainable.

Repeal of Section 230 is the only way to end Section 230's reign of error, injustice, and Rotten Rule of "Do whatever you want to others." Repeal is the only proven, time-tested, constitutional solution that most can readily understand and support, and the only way to restore sovereignty, the Constitution/Bill of Rights, rule-of-law, a duty of care, and justice. Repeal is same rules and right offline-online. Illegal offline, illegal online. Equal justice under law. Only repeal keeps the good (legality) and rids the bad (illegality). Forewarned is forearmed.

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