

## Digital Accountability Act – Frequently Asked Questions

*Would the DAA completely eliminate immunity enjoyed by internet companies under Section 230 of the Communications Decency Act?*

No. When the Communications Decency Act was passed in 1996, the idea behind immunity for internet companies was to enable online platforms to allow users to post content without risking liability for everything and anything that a user might choose to post. The big internet companies have long since stopped being passive platforms for people to post content; they instead play an active role in curating, amplifying, and promoting content – often illegal content – for their own (massive) profit. The DAA would amend the Communications Decency Act to remove immunity only for internet companies that: (a) target the dissemination of the content to an individual or specific group of individuals; (b) act knowingly, recklessly, or negligently in encouraging or facilitating the spread of misinformation, disinformation, or violence; or (c) intentionally engage in a course of business that receives a financial benefit from amplifying misinformation, disinformation, or violence.

Consistent with the original purpose of the Communications Decency Act, internet platforms that do not do these things, but simply allow users to post content, will continue to have immunity.

*Isn't the immunity provided by Section 230 essential for free expression and human rights when it comes to digital speech, by making it possible for websites and online forums to host the opinions, photos, videos, memes, and creativity of ordinary people, rather than just content that is backed by corporations?*

No. This may have been the original purpose of Section 230, but in its current form Section 230 serves to protect massive targeting by the biggest platforms, undermining the ability of ordinary people to reach a broad audience with their creativity, opinions, etc., by amplifying the biggest sellers — white supremacists, neo-Nazis, and other fanatics -- and drowning out the voices of ordinary people. The revised immunity under the DAA, by contrast, would discourage this kind of amplification by holding platforms that do it accountable, but leave fully protected those platforms that provide an open un-curated platform, giving a fighting chance for ordinary people to be heard above the rage of the racists and disinformation fanatics.

*Doesn't the First Amendment prohibit the DAA's proposal to impose civil and criminal penalties for the dissemination or promotion of false information?*

No. While the First Amendment protects some “false” speech and the government may not pass a law simply banning false speech, the courts have long recognized that false speech that creates tangible public harm may properly be regulated. Perhaps the most famous example is the illustration provided by Justice Oliver Wendall Holmes: the First Amendment does not protect “falsely shouting fire in a theatre and causing a panic.”

Indeed, *most* criminal laws (apart from those involving violent crime), especially at the federal level, hold people accountable for harmful false speech. For example, every criminal offense involving fraud, including insurance fraud, bank fraud, consumer fraud, securities fraud, tax fraud – even passing bad checks – punishes people for false speech. Other examples include making false statements to the government, making false statements to corruptly influence an investigation, and perjury. And on the civil side, there are numerous laws holding people accountable for harmful false speech, including libel and slander laws, civil fraud, unfair and deceptive consumer practices, etc.

*Doesn't the First Amendment prohibit the DAA's proposal to impose civil and criminal penalties for the dissemination of threats of violence?*

No. It is well established that the government may prohibit threatening and soliciting criminal acts of violence. Many state and federal laws already prohibit threatening violence. An existing federal statute makes it a crime to solicit, induce or persuade another to engage in criminal activity involving the use, attempted use, or threatened use of physical force against property or persons. The DAA provision is modeled on that federal law and extends it to internet companies in circumstances in which they have engaged in targeting and amplification of the unlawful solicitations.

The fact that the internet companies claim that they do not *intentionally* target and amplify violent content, because they are unable (or unwilling) to monitor for such content, does not bring their actions within the protection of the First Amendment. To the contrary, it defeats any First Amendment defense: if they are indeed targeting and amplifying violence (for profit) with no knowledge of its content, then they are engaged in purely transactional conduct, not expressive speech.

*How does the DAA differ from other proposed bills in this area?*

The DAA is a bold, comprehensive model bill which will:

- Ensure accountability when social media companies amplify dangerous disinformation and threats of violence on their online platforms;
- Protect the broader community from the dangers of the rampant spread online of disinformation and threats of violence;
- Protect online personal privacy and freedom against commercial exploitation.

None of the other proposed bills in this area would ensure this accountability and protection. Given the nature of the threat posed to our democracy and our people by the unchecked power of global internet corporations, we must be bold and comprehensive in addressing this threat.

*Wouldn't the DAA require big internet companies to substantially change their business model?*

Yes. The model of the major internet companies has served their owners well, allowing a handful of people to achieve a level of personal wealth unprecedented in human history. But a model that is based on collecting and exploiting *everyone's* personal information; manipulating people's online experience and amplifying and promoting dangerous disinformation and violence to maximize profit does not deserve protection. It deserves regulation and reform, which the DAA would bring.