

United States Senate
WASHINGTON, DC 20510

December 18, 2020

The Honorable Robert E. Lighthizer
Ambassador
Office of the United States Trade Representative
600 17th Street, Northwest
Washington, D.C. 20006

Dear Ambassador Lighthizer:

We support strengthening trade relations between the United States and the United Kingdom through a potential free trade agreement. That relationship would not be improved, however, by a trade agreement that includes “safe harbor” language similar to Section 230 of the Communications Decency Act of 1996.

As an initial matter, Congress is not requesting, let alone requiring, the Administration to include this type of liability protection in our trade agreements. Trade promotion authority, which establishes the United States’ negotiating objectives for trade agreements, calls for “recogniz[ing] the significance of the internet as a trading platform in international commerce” – not for providing blanket immunity to bad actors because the wrongful conduct took place on the internet. Moreover, there is no reason to believe that such “safe harbor” language actually facilitates U.S. trade policy interests, particularly with respect to a country like the United Kingdom that has a strong rule of law tradition. Instead, the blanket immunity provided by measures like Section 230 allows platforms to escape liability for directly enabling heinous conduct such as online frauds, cyber-stalking, terrorism, and child abuse.¹ Not surprisingly, neither the U.S. Congress nor the UK Parliament are seeking to export this type of immunity. Instead, they are undertaking vigorous debates regarding the proper oversight, transparency, and effective management of digital communications technologies.

Domestically, there is bipartisan consensus around the need to address illegal behavior online. Many Members of Congress, as well as the Department of Justice,² have offered bills to reform Section 230.³ The United Kingdom unveiled its long-awaited “Online Harms” regulation, which would create a new regulatory framework to address unlawful and harmful online content. In

¹ U.S. Department of Justice, Section 230 – Nurturing Innovation or Fostering Unaccountability: Key Takeaways and Recommendations (June 2020), <https://www.justice.gov/file/1286331/download>

² U.S. Department of Justice, Legislative Proposal to Amend Section 230 of the Communications Decency Act of 1996 (September 2020), <https://www.justice.gov/ag/department-justice-s-review-section-230-communications-decency-act-1996>

³ See e.g. S.4066, S.4534, S.3398, S.4756, S.5012, H.R. 8596, H.R. 8636.

parallel, the United Kingdom also passed a law last year that, once fully implemented, will establish a code of practice to protect children from exposure to harmful online content.⁴

Congress passed Section 230 as part of wider legislation in 1996. The internet has changed dramatically since then and, accordingly, Section 230 has not aged well. As legislators proceed to review and examine the issues surrounding internet platform liability, it is unnecessary—and inappropriate—to tie their hands by making Section 230-style immunity an international obligation of our respective countries.

We remain excited by the opportunities presented by a new trade agreement with the United Kingdom. We want our Special Relationship to be as strong economically as it is politically. But inclusion of a “safe harbor” clause in either negotiations or a final agreement is frankly unhelpful to achieving that goal. Thank you for your attention to this matter.

Sincerely,



Mark R. Warner
United States Senator



Rob Portman
United States Senator



Richard Blumenthal
United States Senator



Charles E. Grassley
United States Senator

⁴ UK Department for Digital, Culture, Media & Sport, Code of Practice for providers of online social media platforms (April 2019), <https://www.gov.uk/government/publications/code-of-practice-for-providers-of-online-social-media-platforms/code-of-practice-for-providers-of-online-social-media-platforms>