



To fix social media now focus on privacy, not platforms

BY CAMERON F. KERRY, OPINION CONTRIBUTOR — 01/26/21 12:00 PM EST
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Even before Donald Trump sent his supporters wilding through the Capitol, social media and its effect on political and social discourse had been a hot issue. In the aftermath of the Jan. 6 insurrection, it is boiling over.

Some [blame Twitter, Facebook, and other platforms](#) for giving Trump and other extremists a medium to spread the “[stop the steal](#)” lie and plan for a “[wild](#)” protest in Washington before the event. And afterward, others accuse them of politically-motivated censorship for shutting off Trump’s account and others. Meanwhile, a House committee [plans](#) to increase scrutiny of social media companies in response to the invasion of the Capitol.

These are contradictory criticisms. They share concern about the size and power of certain platforms, but rest on irreconcilable theories about how these platforms abuse their positions and what should be done about them. These contradictions have been characteristic of the debate simmering since the 2016 election about platforms and [Section 230](#) of the Communications Act of 1996, the law that protects online platforms and internet service providers from liability for voluntarily blocking access to obscene, harassing, or otherwise objectionable material.

There is a lot of homework to do to resolve these issues. There is nothing approaching the level of consensus required to amend Section 230 — or even to agree on what the problems are. It is evident from many of the

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critiques of Section 230 — on all sides of the debate — that many disputants are misinformed about its scope or the impact of outright repeal on platforms' liability or their responsibility for user content. It is also evident that some platforms exercise enormous power and can operate as super-spreaders of misinformation and malice, but a lot of thought is needed about how to limit this power and viral spread without unduly restricting free expression or the social benefits of network connectivity.

There is, however, greater bipartisan consensus about using competition laws. Republicans and Democrats [both support](#) stepped-up antitrust enforcement in the tech industry, and the FTC and the Trump Justice Department brought cases against [Google](#) and [Facebook](#). More cases are possible once the Biden Justice and FTC appointees get confirmed and up to speed.

But such cases — and any changes to existing antitrust laws — are projects of years. And although, if successful, they might limit the power of platforms, they will only indirectly affect the quality of information spread over those platforms. These are important policy initiatives to pursue, but they cannot satisfy calls for immediate action.

There is something Congress can accomplish sooner that can have a significant effect on the power of platforms and how they spread information: baseline privacy legislation.

Privacy legislation won't solve all the problems of power or content on digital platforms, but it can help. Legislation that puts boundaries around collection, use, and sharing of personal information would end the anything-goes information system that has aided platforms' growth. It would also limit their ability to exploit their power with manipulative misinformation or marketing and mitigate anticompetitive or antidemocratic effects.

Unlike proposals to adapt antitrust laws to the digital age or to reform Section 230, many comprehensive privacy bills have already been introduced and undergone extensive thought in Congress. Legislators on both sides of the aisle have put in the hard work of gathering input from hearings, stakeholders, and experts. As a result, they have [come close](#) to bipartisan agreement on some important issues. One ingredient has been conspicuously missing — engagement from the White House.

There remain some [big and difficult issues to resolve](#), but a forceful push from members of Congress, [now joined by the Biden administration](#), could close those gaps.

I have been deeply involved in the national privacy debate since leading the Obama administration's development of the [Consumer Privacy Bill of Rights](#) and [proposed legislation](#). We have never been as close to passing a comprehensive national privacy law as we have gotten over the past two years. And as I speak with stakeholders across the spectrum of industry and advocates for privacy and consumers in this new year, I am finding considerable will to do the hard work and bargaining it takes to finish the job.

This is not the time for Congress to give up or be distracted by other ["techlash"](#) issues. Patent reform legislation — on which Congress had repeatedly stalled out, with impasses on tough issues — is a good example of how to get the job done. The Obama administration teamed up with members of Congress on both sides of the aisle and worked

through the issues and, in 2011, achieved the [most comprehensive revision of patent laws](#) in 150 years. This same kind of achievement is within reach on privacy at a time when bipartisan legislation is hard to come by.

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Congress and the new administration have urgent work to do to overcome the coronavirus pandemic, rebuild the economy, and deliver on America's promise of democracy and equal rights. Baseline privacy legislation won't stop the pandemic, put people back to work, or detoxify social media.

But what it can do is empower individuals in dealing with technology and build trust as we expand digital access, promote contact tracing apps, or adjust to new norms of online daily life. And privacy legislation would protect a basic right for every single person in America. It is overdue.

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