Before the

Federal Communications Commission

Washington D.C 20554

Section 230 of the Communications Act Of 1934	**)** **)** **)**	**WC Docket # RM-11862**

Comments of Media Alliance and Global Exchange (together "Protest Facebook Coalition")

Media Alliance and Global Exchange (together as "Protest Facebook Coalition") jointly submit these comments regarding the FCC review of Section 230 of the Telecommunications Act. Media Alliance is a Northern California – based democratic communications advocate. Our members include professional and citizen journalists and community-based media and communications professionals who work with the media. Our members are concerned with communications rights, especially at the intersections of class, race and marginalized communities. Global Exchange is an international human rights organization dedicated to promoting social, economic and environmental justice around the world. Acting jointly as the Protest Facebook Coalition, we seek to take action against social media handling of political ads that contain blatant disinformation, rein in viral micro-targeting and stop the spread of hate-based messages that incite violence in our communities.

I – SECTION 230 PROVIDES VITAL PROTECTIONS FOR ONLINE PUBLISHERS

Section 230 has been undergoing widespread criticism for being the source for social media and online publishing companies seeming teflon protections against the consequences of lax moderation polices and disturbing algorithmic patterns. We want to take a step back and make two points:

a. There is a difference between policy sufficiency and enforcement sufficiency. It is crucial for regulators not to conflate enforcement failure with policy failure and the remedies for each are distinct. Were prominent social media companies (including the one whose name is contained in our coalition name) executing on established community standards and moderation policies that are clearly published with more

efficacy, this rule-making would be largely unnecessary. Clearly, they are not. But we should be careful about characterizing an enforcement problem and a remedies problem as a question of policy. And we should also be careful about throwing the baby out with the bathwater.

Section 230 is a complicated piece of law that contains many critical protections that protect freedom of expression and vital liberties that our society with reason greatly values. The intent of this comment is to identify some limited corrective actions to maintain the spirit of Section 230 while adjusting to technological changes that have greatly changed the landscape.

We also encourage the Commission to think deeply about questions of enforcement of existing protective policies which of course cannot protect if inadequately applied and enforced. We understand the difficulty of financial remedies when applied to enormously wealthy corporate entities that can absorb penalties as a mere cost of doing business as usual. Part of the Commission's role on behalf of the American people is to incentivize socially constructive behavior by regulated entities. We encourage you to look for ways to better accomplish that.

b. Section 230 of the Telecommunications Act exists to protect the free online dialogue of the public about issues of importance to the society. Its purpose is to enable online platforms to permit vigorous dialogue and to facilitate the use of the Internet's relatively limitless bandwidth to host a wide variety of viewpoints, perspectives and alternative sources of information much broader than that available via legacy communication channels with relatively limited bandwidth and capacity. Everything can be somewhere on the Internet and everything is. The protections against liability provided by Section 230 allow participation in online discourse by parties that lack large scale financial resources and facilitate on-going innovations in civic engagement and public discussion. Without them, the Internet would be a very different place, and our electronic public square would be greatly impoverished. There is no doubt that a wholesale rejection of Section 230 and a transition to online publishing standards that mimic offline publishing standards would do great damage to millions of online publishers, local news sources, community and independent media sources, bloggers and others who partake in our online public square. Many would be forced off-line and the American public would have less information

at our disposal and less ability to make their thoughts known to fellow members of their community, local media and legislators who affect their lives. We implore you to recognize the centrality of Section 230 to online civic dialogue and engagement and the role that the online communities continue to play in the full expression of America's first amendment to the constitution. Especially in the current pandemic, when virtually all of public life has shifted online with no end in sight, we cannot minimize the importance of free expression in online channels without the fear of crippling litigation.

That said, our coalition and in fact, many if not most of civil society, has grave concerns about the nature of some of our public dialogue at the moment. The role of finances, as with our off-line political system, often distorts the outcome of civic engagement by conflating the free exchange of ideas and their merit-based evaluation with the pockets full of dollars required for mass distribution. Similarly, the growing sophistication of algorithmic formulas to catapult content into viral spread has come to dwarf the organic movement of content based in its actual appeal to readers or viewers. Such manipulative formulas are often constructed to maximize polarization by trapping average users in filter bubbles constructed for them without their consent by analysis of their previous search, view, like and comment habits. Finally, content that fits the definition of hate speech and seeks to whip up discrimination, harassment and outright violence towards vulnerable groups, who our government by policy seeks to protect, is often left untouched. This creates an environment of danger for people whose gender, religion, race, ethnicity, economic class or other marker is one of minority status in American society. This is intolerable and presents a large-scale civil rights challenge.

The question is, what can we do without stamping on the First Amendment and destroying the vital online discourse that has greatly enriched our society and which public discussion in the age of COVID increasingly depends? We humbly submit these comments in pursuit of an answer to that question.

II – PAID CONTENT VS. UNPAID CONTENT

One distinction of significance is paid (sponsored) content vs unpaid content. We join most of civil society in upholding freedom of expression rights for online content that is distributed on online channels for organic review as a contribution to public discourse. Censorship, which has a long and dark history, serves only

to prevent a well-informed populace and to suppress ideas. Our society is not better off with the wholesale suppression of ideas that prove unpopular with or feel threatening to some sectors of our society. Our basic constitutional protections allow anyone with a pamphlet to circulate their treatise under the principle of free speech, and we cannot seek to limit or restrict that basic right. However, the merit-based marketplace of ideas is based upon a fundamental equity of intellectual capacity that assumes that all ideas are equal and that their eventual success or failure is linked to their appeal, sufficiency, and accuracy. The act of advertising or enabling the spread of ideas with financial resources has always challenged the merit-based marketplace of ideas. And in the online sphere, the impact has been exponentially increased by the instantaneous speed of spread, which makes a mockery of the former instrument of the postage stamp.

In addition to speed, we have the growing sophistication of search and distribution algorithms, which were again, not a factor in the days of the Pony Express. These formulas, so complicated that some tech companies have made public statements that the coding is no longer transparent even to the coders themselves, point content to certain viewers and not others, based on markers that include demographic data, search and comment history, and various other kinds of personal information, some quite sensitive, collected by tech companies. These formulas amplify polarization and filter bubbles and incite the viral spread of provocative, controversial and sometimes violent and hateful content at hyper-speed, often outrunning human efforts to contain it.

These changes make a strong case for distinctions between organic content and the content being hyper-amplified through on social media channels. Progressive groups like our own have two suggested modifications for existing law to address these problems.

a. We suggest that the FCC consider algorithmic limitations for the most political of this content i.e. direct political ads. Political ads, as differentiated by ads that contain political content, are directly taken out by candidates for political office and are thus a specific element in our democratic election process. By definition, the democratic process involves **all** eligible voters, not just some, and it is an evaluation of a candidate's suitability to represent all of the voters in a particular district or jurisdiction. In order for voters to be able to evaluate how a candidate will represent their interests, they need to be able to see and assess all of the candidate’s material. Online formulas that direct a candidate's political ads to some eligible voters and not

others subvert the democratic process that requires candidates to make their case to all the voters. Representative government cannot function when tech companies enable an electronic version of telling different groups of people what they want to hear. We suggest that online ads from political candidates be restricted to strict geographical distribution to eligible voters without further distinction by personal religious, ethnic, racial, health, income or gender markers or by previous online history.

b. The release of liability for online publishers, which is intended to protect free expression, should continue to protect free expression. It is not clear, however, that it should protect viral spread at scale that is paid for and sponsored. The Commission may want to consider ad buy ceilings beyond which liability protections no longer apply. Such ceilings would need to be both individually applicable and applicable in aggregate, so as to clearly distinguish between conventional promotional activity and viral spread activities. We believe that this modest update to Section 230 would protect small publishers and alternative informational sites and continue to permit them to engage in reasonable targeted outreach while raising the costs of doing business for actors attempting to incite viral viewership at scale. Such actors are in fact pursuing mass communication capacity much like that provided by a broadcast outlet or "daily newspaper"--without the inherent equality of audience provided by such outlets. Accordingly, the platforms that accommodate them are stepping into the historical role that publishers occupy as gatekeepers of mass or bulk communications. We believe this nuanced update to Section 230 would meet the goal of protecting both free speech rights and adding accountability for litigious and malicious content being spread virally at scale.

II – PUBLISHERS DO NOT SELL PRODUCTS

Section 230's protections were intended to support discourse and the free exchange of ideas, not to protect product-based commerce. Consumers have long relied on protections if they purchase a clock or a thermometer or a barbecue and the item proves to be defective and explodes or falls apart on use. The platform used to purchase the product and whether it is a brick and mortar based establishment or an online retailer should not determine the extent of liability or redress through the court system for harms, which can range from mild injury to crippling injury and death. The distinction made, in this case, between online and offline providers serves no helpful purpose and in fact places consumers in danger, although most do not

consider the liability consequences of a manufacturer defect before deciding to buy a microwave oven at a department store or via an online retailer like Amazon. We owe consumers the ability to purchase from the provider whose prices, location and product specifications provide them with the greatest value and convenience without having too, often unknowingly, sign away significant protections for their lives and limbs. Constitutional protections as defined in Section 230 should not extend as far as the right to escape liability for defective products that hurt the people who buy them and use them.

III – THE COMMISSION SHOULD REGULATE COMMUNITY STANDARDS FOR SOCIAL RESPONSIBILITY

Online platforms have consistently advocated for the ability to police themselves. We agree that online self-regulation is far preferable to the subject of this rule-making – which is the possible elimination of Section 230 protections with the devastating impacts on alternative information sites that we have discussed above. But in order for self-regulation to work, it is necessary for the Commission to play a role in standardizing the parameters for the scope, reach and enforcement of such policies. The very real harms of algorithmic manipulation, polarization, disinformation, and viral incitement to violence are observable and sobering and call for action by the Commission.

We ask the Commission to construct standards for content moderation policies by establishing a basement for what such policies must contain and the operational capacity that must accompany them. We believe this can be done in the following manner:

a. Clear, precise rules that are publicly available, and applied equally to pages and publishers of all sizes and ideological orientations. These rules must contain precise, clear metrics.

b. Clearly delineated sanctions that can be imposed if they are violated. Precisely delineated descriptions of the rules violated and the specific evidence of their violation must accompany sanctions.

c. A transparent third-party appeals process must be available that allows the accused party to respond to specific alleged violations. The results of the appeals process must be provided to the accused party within a reasonable period.

d. An outright prohibition on incitements to violence or content that objectively seeks to create hatred towards groups of individuals due to protected characteristics.

e. Sufficient allocation of resources to allow for real-time response by competently trained human beings with the authority to enforce the community standards policy.

f. Transparent and publicly available reports that indicate quantity of complaints received and actions taken for any platform above a certain specified number of annual platform visitors.

While this may sound reasonable enough, civil society advocacy efforts including our own, as well as those of Change The Terms, Stop Hate for Profit and others, have demonstrated that not all online platforms have, to date, been willing to adopt common sense standards on a voluntary basis. Some prefer to pick and choose certain content to address and certain content to ignore, or to under-resource enforcement programs so extensively that they are, in effect, designed to fail. Regardless of place on the ideological spectrum, we should all be able to agree that uneven or sporadic enforcement of unclear community standards policies is not only unsatisfying and harmful to our society, but fails the test for meaningful public policy.

This place is exactly where government regulation needs to take over—not with a mallet, but with a light touch that retains the positive aspects of current law and addresses the loopholes that emerge over time.

Thank you for your consideration.

Respectfully submitted

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