

Framing the Conversation:

Is De-platforming the Answer? How to Fight Attacks on Democracy in a Digital Age

Does the First Amendment apply to private businesses?

No, it does not. The First Amendment [is concerned](#) with restraining the ability of federal, state and local *government* to censor speech and expression. In its text, the First Amendment states that “Congress shall make no law...abridging the freedom of speech,” explicitly prohibiting Congress and the federal government from restricting free speech. Courts, via the 14th Amendment, have [similarly applied](#) this restriction to state and local governments.

While freedom of speech and expression is fundamental to American democratic society, private businesses—including social media platforms—are not required to abide by the provisions of the First Amendment. Therefore, Twitter, Facebook and other platforms cannot violate an individual’s right to “free speech.”

Why doesn’t Twitter’s ban of former President Trump violate the First Amendment?

Just as television networks can choose which shows to air and newspapers can choose which articles to publish, social media companies can choose which posts or accounts to host on their platform. They are [not required by the First Amendment](#) or any law to allow anyone, including President Trump, to post anything they wish on their platforms. Social media companies, including Twitter, can ban any user who violates their terms of service.

How do social media companies currently regulate content on their platforms?

While social media companies are not required by law to regulate content on their platforms, most mainstream platforms recognize the societal benefits of doing so. While each platform moderates content differently, most require users to abide by “terms of service,” which outline acceptable and unacceptable uses of a particular platform. When users post content in violation of a platform’s terms of service, [platforms can remove or restrict those posts or users](#), label a post as inaccurate or misleading, restrict individuals from commenting or sharing the post or limit the extent to which that post is promoted to other users. Decisions as to whether a post violates terms of service are made by both computers and people and often involve difficult judgments. Some companies, [such as Facebook](#), leave particularly difficult and high-profile decisions of whether to remove a user or post to a designated investigatory body.

What is Section 230 and why does it matter?

[Section 230 of the Communications Decency Act of 1996](#) states that “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” Under this law, no technology company that provides a service that allows individual users to post or publish content online can be held liable for the content of those posts.

While this law has provided for the rapid development and growth of many social media platforms, [questions have arisen](#) about the extent to which such protection is still warranted. Should social media companies be held liable for publishing or promoting hate speech or conspiracy theories on their platforms? Should they be required to treat all users equally, regardless of political or other affiliation? These questions are especially relevant in light of former President Trump’s de-platforming and the role social media played in organizing the insurrection that took place on January 6th.

How do social media companies make money and why is that relevant?

Most social media services do not charge their users a membership or user fee. Instead they rely upon revenue from [ads and promotions](#), which are targeted to specific users using complex data algorithms. Through this business model, social media companies are incentivized to encourage users to spend more time on their platforms. The more time an individual spends on a platform, the more ads they view and the more data the platform gathers from the user. Platforms in turn use this data to better target ads and posts, generating more ad revenue for the company. Through this mechanism, [social media companies benefit from showing their users posts that are likely to attract their attention](#) and capture their interest rather than the most relevant or trustworthy posts. This can lead to the algorithmic promotion of radical ideologies, explicit material and conspiracy theories.