

Social Media Giants: A Threat to the Rule of Law

The Hon Peter Applegarth AM KC





**Remember
1996?**



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Headlines

Cool
Popular

Write Us
Random

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Info

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MR

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Netscape - [Alta Vista: Main Page]

File Edit View Go Bookmarks Options Directory Window Help

Location:

Alta Vista digital.com

Simple Query

Advanced Query

Surprise

Help

Search and Display the Results

To find good food: pizza "deep dish" +Chicago

Document: Done

Google!

Search the web using Google!

10 results ▼

Google Search

I'm feeling lucky

Index contains ~25 million pages (soon to be much bigger)

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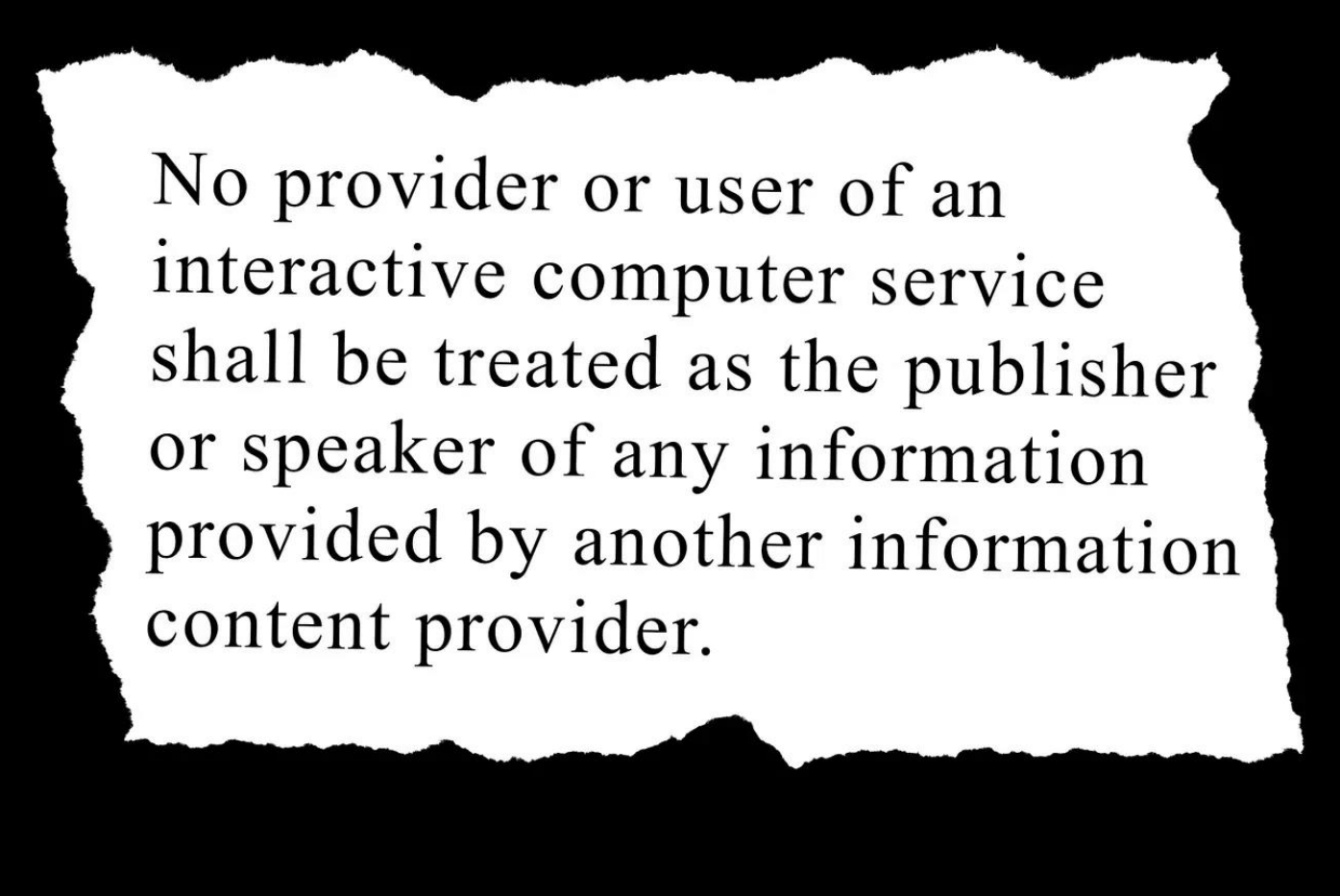
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s 230 of the *Communications Decency Act, 1996*



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.



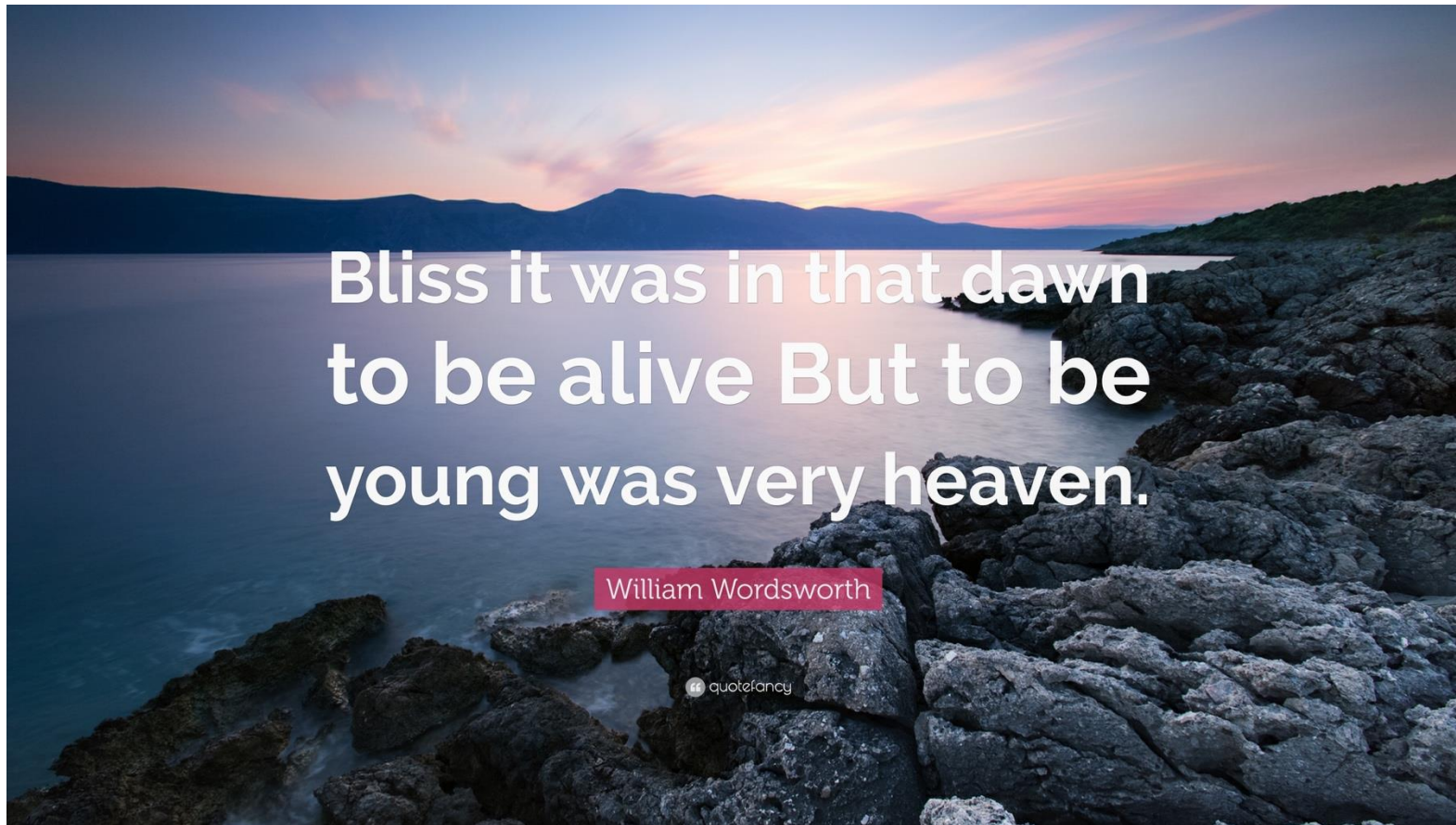
Disputes over offensive content and whether the internet should be regulated at all started at its infancy

Tuesday 25 Jan 2022 • 33min

S1. Ep 5: A Scottish Jewish joke

Things Fell Apart

The podcast episode explores the first online culture war over who would make the rules on the internet.



The birth of the internet: a free electronic frontier

The reason for s 230

In the years leading up to Section 230, courts had held that an online service that passively hosted third-party content was not liable as a publisher if any of that content was defamatory or otherwise unlawful, but that a platform would be liable as a publisher for all its third-party content if it exercised discretion to remove *any* third-party material

Services faced a dilemma, they:

- could try to moderate third-party content but risk being held liable for **any and all** content posted by third parties, or
- choose not to moderate content to avoid liability but risk having their services overrun with obscene or unlawful content.

The reason to repeal or amend s 230

“The internet has changed dramatically in the 25 years since Section 230’s enactment in ways that no one, including the drafters of Section 230, could have predicted.

Several online platforms have transformed into some of the nation’s largest and most valuable companies, and today’s online services bear little resemblance to the rudimentary offerings in 1996.

Platforms no longer function as simple forums for posting third-party content, but instead use sophisticated algorithms to promote content and connect users.”

US Department of Justice, 2020



“Today’s digital platforms provide avenues for historically unprecedented amounts of speech, including speech by government actors.

Also unprecedented, however, is the concentrated control of so much speech in the hands of a few private parties.

We will soon have no choice but to address how our legal doctrines apply to highly concentrated, privately owned information infrastructure such as digital platforms.”

Justice Clarence Thomas

Attempts to Reform s 230

“Unfortunately, Section 230 is now poisoning the healthy online ecosystem it once fostered. Big Tech companies are exploiting the law to shield them from any responsibility or accountability as their platforms inflict immense harm on Americans, especially children. Congress’s failure to revisit this law is irresponsible and untenable. That is why we’re taking bipartisan action.

Over the years lawmakers have tried to no avail to address these concerns, thanks in part to Big Tech’s refusal to engage in a meaningful way. Congress has made good-faith efforts to find a solution that preserves Big Tech’s ability to innovate and ensures safety and accountability for past and future harm. It’s time to make that a reality, which is why we are unveiling today bipartisan draft legislation to sunset Section 230.

Senators McMorris and Pallone – May 2024

**And in late news....
“Lawmakers are trying
to repeal Section 230
again”**



“Congress’ least favourite law is once again facing an existential challenge by bipartisan opponents.

Sens. Lindsey Graham (R-SC) and Dick Durbin (D-IL), the top Democrat on the Judiciary Committee, are planning to reintroduce a bill to sunset Section 230 of the Communications Decency Act in two years.”

March 2025

The definitive word on s230

“Section 230, which is a liability shielding gift from the U.S. to ‘Big Tech’ (the only companies in America that have it - corporate welfare!), is a serious threat to our National Security & Election Integrity. Our Country can never be safe & secure if we allow it to stand.”

Who said that in 2020?



Four years later...



In conclusion....



Section 230 has conferred a huge competitive advantage on social media platforms over the legacy media they decimated.



Its repeal would not leave social media platforms without protection. Like other content creators and content hosts, social media platforms would have the protection of the 1st amendment and continue to be shielded from foreign judgements in defamation and other cases.



Section 230 has given powerful social media platforms like X and Meta immunity to host and prioritise defamations, disinformation, hate speech, and other harmful content.



Such an extensive legal immunity from the harmful consequences of the business model of some of the richest corporations in the world can only be described as **a threat to the rule of law.**