

# PRESIDENT TRUMP'S EXECUTIVE ORDER

By: Jack Greiner on May 29, 2020 on [graydon.law](https://graydon.law)

I taped a segment with WLW's [Scott Sloan](#) today talking about President Trump's [Executive Order](#) addressing his concerns with various social media platforms. Some folks have described it as "Trump v. Twitter" and I suppose that's not an unreasonable description. Twitter's recent decision to add a [fact check](#) to one of President Trump's recent tweets seems to have influenced this decision. But it's as much Trump v. [The Communications Decency Act](#) as anything else.

Congress enacted the CDA in 1996. Section 230 of the Act has two critical components. First, the Act decrees that websites (including social media platforms) are not deemed the publisher of third party content. That means Twitter can't be sued if a user uploads defamatory content. This provision gives Twitter and other platforms the freedom to host a wide variety of content without fear of liability. That was part of Congress' objective to make sure the discussion on the internet would be robust and uninhibited.

But Congress also didn't want to penalize platforms that took down certain content. So the CDA provides that an operator won't lose the CDA immunity for "any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected." This section is sometimes called the "Good Samaritan" provision. It's really this part of the law that's covered by the Executive Order.

The Executive Order intends to limit the ability of platforms to invoke the Good Samaritan protection. The thinking behind the Executive Order is that if the platforms limit or remove content based on political bias, it's not an action taken in good faith. The Executive Order suggests such a bias on Twitter's part because, while it fact checked President Trump's tweet, it has not checked tweets by Adam Schiff. The Executive Order would empower the Federal Trade Commission and the Federal Communications Commission to police the alleged biases of social media platforms.

It's not clear to me exactly how this would all work, and what the impact would be. If there's a finding that a platform is biased, does it lose immunity across the board, or just for those

circumstances where it removes content? I guess we'll find out.

Just a few observations. The Executive Order calls itself "Preventing Online Censorship." Not to nitpick, but private entities really aren't "censors" in the strict sense of that word. Censorship is when the government cuts content. And to the extent the Twitter fact check thing inspired the Executive Order, that's not really "censorship" either. Twitter provided additional factual information to help readers decide if the tweet was accurate. But the tweet is still up and readers can judge for themselves.

And I'm not sure why courts can't decide whether a particular decision to edit is done in good faith. That seems like a decision the courts make all the time. Empowering the FTC and FCC to themselves act as censors doesn't strike me as a workable idea.

We will see what happens. In the meantime, here's [a good piece](#) explaining the Executive Order in a little more detail.