

Myths and Facts on USMCA and Section 230

Myth: Including Section 19.17 in the USMCA will prevent Congress from amending Section 230 of the Communications Decency Act.

Fact: Nothing in the USMCA would preclude Congress from amending Section 230 — not that it should.

Unlike a treaty, the USMCA is only an agreement. This means that neither the US nor Mexico nor Canada are strictly bound to the text. In essence, if the US decides to exceed the text of the USMCA, it can.

Moreover, the power of Congress to exceed the text of the trade agreements is enshrined in the Trade Promotion Authority (reenacted in 2015). The TPA expressly included a section on “Sovereignty” to confirm that U.S. law has primacy over trade agreements.

Section 108(a) of TPA ensures that U.S. law will prevail in the event there is a conflict between the law and a trade agreement entered into under TPA. Section 108(b) ensures that no provision of a trade agreement entered into under TPA will prevent Congress from amending or modifying a U.S. law. Section 108(c) provides that dispute settlement reports issued under a trade agreement entered into under TPA shall have no binding effect on U.S. law.

Finally, USMCA is subject to longstanding exceptions that allow countries to enact measures “necessary for the protection of public morals.” USMCA negotiators made clear that this exception applies to Article 19.17, and highlighted the recent FOSTA-SESTA law as a recognized example under this exception.

In essence, arguments are **false** that say section 19.7 of the USMCA prevents Congress from amending Section 230.

Myth: We do not add provisions to trade agreements that are currently being debated in Congress and agencies.

Fact: Trade agreements regularly include provisions that are being reviewed and debated – issues like copyright and trademark.

Our trade agreements have often included provisions related to the protection of US copyrights and trademarks abroad. For example, the USMCA requires “a minimum copyright term of life of the

author plus 70 years, and for those works with a copyright term that is not based on the life of a person, a minimum of 75 years after first authorized publication.” This provision is currently being debated in the halls of Congress as various interests are approaching life-end of their copyrights.

Likewise, USMCA includes provisions for protecting trademarks as legislatures and courts across the country are considering whether to amend our current trademark process like Trade Protection Not Troll Protection Act and cases being decided before US courts.

Myth: Section 19.17 will not help American businesses and is not relevant to U.S. trade interests.

Fact: Hundreds of thousands of US small businesses depend on online customer reviews and user interaction in order to reach foreign customers, but these new tools of trade would not exist if platforms were automatically held liable for user content.

A fundamental reason that platforms have been able to play a trade-enabling role is their open nature. Online services enable transactions and communications among millions of businesses and consumers, enabling US sellers to connect directly with global buyers. If there were a duty to inspect or filter each piece of content, then these services simply wouldn't exist, meaning that small businesses wouldn't be able to leverage new online tools to reach new customers abroad.

Research makes clear that Section 230 continues to enable strong American economic growth. There is a direct correlation between countries with intermediary liability protections like Section 230 and economic growth. Over the next decade, Section 230 will contribute a further 4.25 million jobs and \$440 billion in growth to the economy. And Section 230 has enabled the U.S. tech industry to far outperform the EU. In the U.S., online platform businesses are 5 times more likely to raise over \$10 million in venture capital funds than EU platform businesses. Section 230 enables a world-leading, innovative and competitive tech industry.

Myth: Including Section 19.17 in the USMCA allows copyright-infringing content to proliferate.

Fact: Section 230 and the USMCA expressly exempt intellectual property:

47 USC 230 (e)(2) Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

And intellectual property is expressly exempted from USCMA:

Nothing in this Article shall:

- (a) apply to any measure of a Party pertaining to intellectual property, including measures addressing liability for intellectual property infringement; or
- (b) be construed to enlarge or diminish a Party's ability to protect or enforce an intellectual property right;

Myth: Section 19.17 will undermine free speech online.

Fact: There is a reason that the United States is the creator of Section 230 -- it advances our core values of free speech from diverse voices.

Because of Section 230, U.S. companies, creators, and consumers have generated more free speech than at any time in the history of the world. For over 20 years, U.S. policy has encouraged user-created content on the internet. The fact that America, the birthplace of the internet, decided early on to "maximize user control over what information is received by individuals who use the Internet" established norms that should be emulated in countries around the world. The provisions in USMCA continue America's goal of being a beacon to the world by encouraging adoption of Section 230 as a tool of democracy and free speech.

Section 230 has enabled speech from diverse political perspectives to flourish online in a way that never could have happened if just three networks or a handful of media companies were in a position to decide who can participate.

Myth: Section 19.17 enables criminality.

Fact: Section 230 and the USMCA expressly exempt federal criminal law.

47 USC 230(e)(1) Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, or any other Federal criminal statute.

USMCA adopts this same exemption and clearly empowers law enforcement:

- (c) Nothing in this Article shall be construed to prevent:
 - (i) a Party from enforcing any criminal law
 - (ii) a supplier or user of an interactive computer service from complying with a specific, lawful order of a law enforcement authority

This means that law enforcement can enforce laws against platforms for content posted by others

that violate copyright law, and any other federal criminal laws.