



September 17, 2020

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Room TW-A325  
Washington, DC 20554

Re: *Reply Comment on NTIA Petition for Rulemaking*, Docket No. RM-11862

Dear Ms. Dortch,

Tripadvisor, the world's largest travel platform, welcomes the opportunity to participate in this proceeding to address the *Petition for Rulemaking* filed by the National Telecommunications and Information Administration,<sup>1</sup> which seeks to have the Commission promulgate rules to interpret Section 230 of the Communications Act of 1934.<sup>2</sup> We have reviewed many of the opening comments filed in this proceeding. As a result of that review, we submit these reply comments so that issues critical to Tripadvisor and other similar sites do not get lost in the fray—in particular, to ensure that the Commission understands the breadth of the ecosystem covered by Section 230, how Tripadvisor and other review sites fit into it, and how NTIA's proposals would negatively affect internet companies like us.

NTIA's proposal, and indeed the vast majority of comments filed in this proceeding to date, have been heavily focused on the major social media platforms.<sup>3</sup> There may well be important debates to be had with respect to those large online platforms. Amid these debates, however, the Commission should not lose sight of the real value of Section 230 for many other—often smaller—sites and services: Section 230 enables a wide variety of platforms to set policies and make determinations to control the content available on their websites. Any effort by the Commission to restrict that value would be misguided as a matter of policy, disproportionately harmful to small and medium-sized website companies, and also potentially unlawful.

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<sup>1</sup> Petition for Rulemaking of the National Telecommunications and Information Administration, *In the Matter of Section 230 of the Communications Act*, RM No. 11862 (filed July 27, 2020).

<sup>2</sup> 47 U.S.C. § 230.

<sup>3</sup> See, e.g., *NTIA Pet.* at 4, 7–8; Comments of AT&T Services, Inc., at 3 (Sept. 2, 2020); Comments of the Computer & Communications Industry Association at 6–8 (Sept. 2, 2020).

## Background on Tripadvisor

Tripadvisor is an online travel platform focused on helping travelers benefit from the best of the internet—scale, reach, and the wisdom of crowds. With more than 867 million reviews and opinions pertaining to 8.7 million accommodations, restaurants, experiences, airlines, and cruises, Tripadvisor helps 463 million travelers each month make every trip their best trip. Tripadvisor is available in 49 markets and 28 languages.<sup>4</sup>

As a platform for unbiased traveler reviews, Tripadvisor has benefited both travelers and the tourism industry. Using our platform, large and small hospitality businesses alike are able to reach a huge, global audience of potential guests and compete on the quality and value of the service they provide. For independent businesses with little to no marketing budget, this type of exposure would have been otherwise impossible. We are proud of the positive impacts that we have generated across the travel ecosystem, including helping to inform over \$546 billion of global travel spend annually.<sup>5</sup>

Tripadvisor has created a community where members can use one another's travel reviews to plan and book their perfect trips. We believe it's our responsibility to empower our community with relevant and reliable information. That's why, over the past 20 years, Tripadvisor has developed an industry-leading approach to content moderation focused on the integrity, relevance and reliability of the reviews and opinions hosted on the platform.

To ensure integrity, relevance, and reliability of the content appearing on our platform, **every** review submitted to Tripadvisor passes through a rigorous moderation process **before** the review is posted. There are a number of reasons why Tripadvisor rejects or removes reviews, ranging from guideline violations (as explained more below)<sup>6</sup> to instances of outright fraud. To promote transparency, Tripadvisor reports information on its content moderation processes and outcomes. To our knowledge, we are the only online review platform to have published a transparency report devoted to fraud detection.<sup>7</sup>

In short, every review is analyzed using advanced language-analysis and fraud-detection technology. If the analysis system detects a problem, the review is sent to our content moderation team for human review. We keep moderating even after publication, including by involving our large travel community, who are able to report any potentially suspicious or

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<sup>4</sup> See <https://tripadvisor.mediaroom.com/US-about-us>.

<sup>5</sup> See <https://www.tripadvisor.com/TripAdvisorInsights/w2841>.

<sup>6</sup> See <https://www.tripadvisor.com/support/hc/en-us/articles/200614797-Our-guidelines-for-traveler-reviews#a=guideline+violations>.

<sup>7</sup> For additional details on these findings, Tripadvisor's approach to content moderation, and other statistics related to Tripadvisor's work to promote transparency, please read Tripadvisor's *2019 Transparency Report*. See [https://www.tripadvisor.com/TripAdvisorInsights/wp-content/uploads/2019/09/2147\\_PR\\_Content\\_Transparency\\_Report\\_6SEP19\\_US.pdf](https://www.tripadvisor.com/TripAdvisorInsights/wp-content/uploads/2019/09/2147_PR_Content_Transparency_Report_6SEP19_US.pdf).

problematic reviews to us for manual review. Tripadvisor's global travel community wrote and submitted 66 million reviews to Tripadvisor in 2018. While all of them were computer-analyzed using hundreds of different criteria to ensure compliance with our policies—including but not limited to being too old, not being directly relevant to other travelers, containing rumors or secondhand information, or being unduly biased or fake—Tripadvisor's human content analysts also manually assessed 2.7 million of those reviews that were flagged by our systems or by other users. In the end, 4.7% of all review submissions were rejected or removed by either Tripadvisor's advanced analysis technology or manually by the content moderation team for guidelines violations.

**Section 230 is critical to Tripadvisor's ability to offer its  
valuable services and protect its platform.**

The process we've just described—specifically, the ability to detect and reject fraudulent reviews or other problematic content submitted by users—is the essence of what Section 230 enables. While Tripadvisor is very different from the large social media companies targeted by the NTIA's petition, we similarly rely on Section 230 to operate. In fact, by aggressively moderating for both relevancy and reliability, Tripadvisor has built a business around responsible content moderation to ensure travelers and businesses alike benefit from legitimate and useful content. We take this responsibility seriously and will continue to push our industry to do the same.

For example, a traveler planning that perfect beach vacation doesn't want to wade through irrelevant or fake posts. They want to know from other travelers things like: What is the hotel room like? What local activity would be most appropriate for kids? Where is the best taco stand? Section 230 enables us to moderate superfluous, untrustworthy and offensive content, in addition to content that in other contexts would be completely acceptable but, because of the way we have designed and constructed our site, we conclude would be irrelevant to our travel audience. And we take this moderation responsibility seriously.

From Tripadvisor's perspective, Section 230 has two important aspects, the sword and the shield. The shield—liability protection—gets most of the attention, but the sword—the ability to moderate content—is every bit as important to sites like ours. We submit that these intertwined halves of the same law are essential and that they work together well, as Congress intended. Indeed, the historical background of Section 230 in the Prodigy case shows that Congress' concerns were both to protect websites and to allow websites to perform content moderation.

## *The Shield: Liability Protection*

Section 230(c) protects platforms from liability stemming from user-generated content. Tripadvisor seeks to host travel information that is both relevant and reliable—including good and bad reviews—so as to be useful to travelers. Of course, not every business wants to be publicly criticized. Without protection by Section 230, review sites such as Tripadvisor could easily become nothing more than only-positive advertising glimpses into products or services, because hosting critical or negative views would create a substantial risk of legal liability under the patchwork quilt of state defamation laws, among other laws. As a result, one of the greatest benefits of the internet—the wisdom of crowds—would be lost, and review platforms would lose much of their utility to the parents, consumers, patients, and travelers that rely on them for information on a host of important decisions. Tripadvisor, in other words, uses Section 230 to “shield” our business from angry business owners (and even their competitors) that want editorial control of our users’ posts.

A timely example of how Tripadvisor uses Section 230 as a shield against liability is Tripadvisor’s new “Travel Safe” product,<sup>8</sup> which allows consumers to find, filter for, and validate health and safety information. “Travel Safe” is a key tool in building consumer confidence and, ultimately, supporting the travel economy’s recovery from COVID-19. In this context, Section 230 provides the legal protections that allow us to (i) collect only the information travelers have told us they want to see for a particular type of business, in a checklist format—rather than free form, which businesses might prefer; (ii) host hotels’ & restaurants’ statements about their safety precautions without fear of liability if a business is not completely accurate or honest; and (iii) host user reviews where travelers call out businesses for not meeting COVID-19 safety standards, without fear of litigation by business owners. This critical tool—which is helping travelers begin to eat and travel with confidence during these uncertain times—might well be impossible to host without the protections of Section 230.

When a site operates at the scale we do (over 250 posts per minute), cease and desist letters arrive from across the globe every day, demanding we remove content. We cite Section 230 in responding to those letters—including to international challengers—to clarify that as a US-based platform governed by US laws, we are able to host reviews without undertaking the impossible task of fact checking each of them. Section 230 provides powerful protections for our business to operate and provide valuable services both domestically and internationally.

Without this shield, Tripadvisor would face not only the risk of adverse judgments but also vastly increased litigation costs associated with challenges to moderation decisions. Indeed,

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<sup>8</sup> *Tripadvisor Launches ‘Travel Safe’ Tools*, <http://ir.tripadvisor.com/node/17581/pdf>.

not only could we be challenged based on decisions to *post* negative but authentic first-hand reviews of hotels, restaurants, etc.; we could also be on the front lines of attacks from fraudsters that would challenge decisions to *take down* fake reviews. In a worst-case scenario, absent protection for taking down “otherwise objectionable” content under Section 230(c)(2)(A), Tripadvisor could be the subject of attacks by “UGC Trolls” (“User-Generated Content” Trolls)—individuals who would threaten litigation related to hosted user-generated content with the goal of extracting a legal settlement (financial, or even just silencing their critics). Given our scale and the size of the travel industry one can easily imagine—absent Section 230—a cottage industry of lawyers suing companies like ours.

### ***The Sword: Content Moderation***

The other aspect of Section 230’s protections that is critical to Tripadvisor, and also central to Congress’ intent in passing Section 230, is the statute’s ability to serve as a sword rather than a shield. We submit that this purpose is of equal importance to Section 230’s overall function, although it often receives less attention in contemporary reporting or research. Based on this aspect of the law, we have built a business around responsible content moderation, to ensure travelers and businesses alike can benefit from legitimate and useful content. This is important to us and consumers for many reasons:

- *First, we need to keep content travel-relevant.* We are a travel website, and need to keep the focus of our content on travel. We therefore use Section 230 to moderate irrelevant, untrustworthy, untimely and offensive content that lies beyond the scope for which our travel audience is looking. We enforce strict guidelines to do this, including: All reviews must be based on firsthand knowledge, must be relevant, must contain no offensive language, and cannot include product promotions.<sup>9</sup> Content that would be perfectly fine on another platform is simply not appropriate on Tripadvisor given our tailored focus. Our users want to know about the service in an out-of-the-way restaurant, not that a traveler’s baby said her first word there. They want to hear that a tourist attraction is closed for restoration, not that someone ran into an old friend while visiting it. And they want to know about the décor of the honeymoon suite; they certainly do not want to hear about what happened in that suite during the honeymoon.
- *Second, we need to fight fraud.* One of the top challenges for the trust and safety team at any review site is catching and preventing fake reviews from being posted. We affect over \$550 billion in global travel spend annually. Given this magnitude, there are not surprisingly networks of paid reviewers that seek to improperly steer some of that spending in their direction. Due to our significant investment in anti-fraud

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<sup>9</sup> For the full list of our guidelines for reviews, please see *Tripadvisor Guidelines for Traveler Reviews*, <https://www.tripadvisor.com/hc/en-us/articles/200614797-Our-guidelines-for-traveler-reviews>.

technologies and human expertise, Tripadvisor prevented over 1 million fake reviews from being posted to our site in 2018 alone.<sup>10</sup>

- *Third, we have a business need.* We compete (often with much larger and less segment-focused platforms) on the quality of our review content. That's why we work doubly hard to beat down any negative perception by travelers and owners that reviews on our platform are inauthentic.
- *Fourth, it's the right thing to do.* We connect travelers with parts unknown—a scary concept for many—so it is critically important that we make sure that Tripadvisor is used fairly and honestly by all those who contribute content to it.

Section 230(c)(2)'s broad authority permitting websites like ours to remove content that is “otherwise objectionable” provides us with authority to moderate in a manner that meets our site's and users' specific wants and needs. While Tripadvisor considers reviews from an owner's brother—or reviews from a traveler that are based only on what she heard on the news—to be “otherwise objectionable,” there is nothing *per se* illegal about either; they just don't meet our brand's heightened standards.

Without this broad grant of legal protection, which can apply specifically to the Tripadvisor context in a far different way than it applies to other websites that operate in other arenas, Tripadvisor would be hard pressed to restrict the content appearing on our site to travel. We would also be limited in our ability to fight fraud if we could no longer rely on “otherwise objectionable” as the legal basis for the removal of fake, biased, or otherwise fraudulent content. Some have suggested that platforms can rely on terms of service instead of Section 230(c)(2) authority. But in our use case, the loss of Section 230 authority in favor of a requirement that we use our terms of service alone might well subject our decisions to heightened judicial scrutiny, even though our aim is merely to responsibly keep our content relevant and reliable. And in many cases, those terms of service could be a thin reed to rely on, as many of the businesses that threaten to sue Tripadvisor are not members of the website and thus have not agreed to our terms of service. Section 230 is what keeps our users' speech protected from disgruntled businesses.

**Neither the NTIA proposal nor most of the comments submitted in response to it consider the effect of the proposed reforms on user-generated review platforms like Tripadvisor.**

As explained above, Section 230 is critical to Tripadvisor's ability to moderate content, stop fake content, and protect users' honest reviews and opinions. We are thus justifiably

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<sup>10</sup> See Transparency Report, at 17.

concerned when the protections contained in that foundational statute are questioned, and especially when efforts to narrow or eliminate Section 230's protections are undertaken without any apparent recognition of the full scope of internet activity and ultimate benefits to consumers that are protected by that statute. While the discourse surrounding Section 230 tends to focus on extreme content—such as terrorism or sexually explicit images of children—very little consideration has been given to the effects that amending the cornerstone law would have upon the 99% of the user-generated content that forms the backbone of beloved websites like Tripadvisor, Yelp, Glassdoor, ZocDoc, Etsy, LinkedIn, eBay, Angie's List, Pinterest and others. Some of the proposed changes to Section 230 that are contained in NTIA's Petition, and that various commenters support, could well erode the ability of Tripadvisor—and sites that operate in a similar manner—to provide travelers with high-quality and relevant content.

The focus of NTIA's petition, of comments in response to that petition, and of the larger public discourse about that petition has been about certain “large social media platforms.”<sup>11</sup> But Section 230 and the whole industries, let alone companies, that it has fostered are much broader. There is a real difference between Tripadvisor and its peers, on the one hand, and Twitter, Facebook, and others—in business model; in how we benefit consumers; and in how we relate to and are affected by Section 230. For example:

- We and others like us occupy a focused space in the “town square” of discourse: travel and tourism or other selected topics. The traditional social media sites on which NTIA focuses are inherently wide-ranging, where users can discuss any topic at all, thus making moderation significantly more cumbersome and subjective.
- We organize our content by business or point of interest—a hotel, tour, restaurant, or attraction. This many-to-many structured platform communication model contrasts with the one-to-many model (where one speaker posts for many to see, about any topic at all), organized by author and containing more free-form and stream-of-consciousness content, used by the social media on which NTIA and most commenters focus. On other platforms, visibility and importance depends on the speaker—what does so-and-so have to say?—as opposed to gathering and sorting collective opinions on an established topic or subject.
- Related to the above, Tripadvisor contains over 867 million reviews and opinions, so any individual review is unlikely to make a material difference. We are based around the wisdom of crowds, whereas on the major social media platforms one outlandish comment that is interesting, entertaining, engaging, or controversial can receive millions of views and get passed around repeatedly.

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<sup>11</sup> See, e.g., NTIA Pet. at 6–8.

- Finally, our guidelines for reviews<sup>12</sup> require all posts to be based on actual first-hand knowledge and the unbiased opinion of the poster. Other social media sites do not necessarily require that—let alone have an elaborate system for checking for fake postings—thus increasing the potential for outlandish claims that cannot be verified.

Critically, however, the NTIA Petition never mentions review platforms like Tripadvisor. But the reforms that NTIA proposes would deeply affect Tripadvisor’s ability to provide travelers with high-quality and relevant content, or other sites to provide similarly useful content. We want to draw specific attention to the following aspects of NTIA’s proposal, where NTIA and commenters have largely failed to consider the effects on review sites like Tripadvisor. Whatever the merit of these proposals with respect to large social media platforms, these proposed reforms would be devastating to other covered entities:

**Section 230(c)(2)(A).** NTIA focuses extensively on convincing the Commission to promulgate a narrow definition of “otherwise objectionable” material in Section 230(c)(2)(A), arguing that this phrase should be interpreted along the lines of the other words in that provision—“obscene, lewd, lascivious, filthy, excessively violent, [or] harassing” material.<sup>13</sup> But the “otherwise objectionable” provision exists specifically because that list is under-inclusive, given the scope and variety of sites that rely on Section 230. And those two words are critical to Tripadvisor’s ability to establish and enforce content policies and engage in content moderation without running the risk of substantial legal exposure.

Although some have suggested that platforms can rely on terms of service to make moderation decisions, in our experience, relying on terms of service alone would instantly subject platforms like ours to heightened judicial scrutiny—all because we aim to responsibly keep our content relevant and reliable. Further, that approach only applies to complaints from a website’s members; many of the complaints Tripadvisor relies on Section 230 for come from non-members. Ultimately, it is because of the current definition of “otherwise objectionable” that Tripadvisor can reject content that is off topic, not based on first-hand knowledge, or otherwise inconsistent with the focus of the Tripadvisor platform.

Without this protection, Tripadvisor would almost certainly face increased litigation costs due to challenges to moderation decisions. Indeed, we would anticipate more legal challenges both to decisions to *remove* reviews—laudatory reviews that bore indicia of being fake, for example—and to decisions *not to remove* reviews—such as negative reviews that a business asserted was defamatory. And in a worst-case scenario, absent the protections from a broad interpretation of “otherwise objectionable,” Tripadvisor and many other websites could be the subject of attacks from “UGC Trolls”—individuals that would threaten litigation related to hosted user-generated content with the goal of extracting quick, moderate legal settlements

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<sup>12</sup> See <https://tripadvisor.mediaroom.com/us-content-integrity-policy>.

<sup>13</sup> See NTIA Pet. at 31–38.



based on websites' rational decision to pay \$10,000 rather than be subjected to \$200,000 in legal defense fees.

**Section 230(c)(1).** NTIA's proposed interpretation of Section 230(c)(1)<sup>14</sup> is similarly problematic for review sites like Tripadvisor. Under this proposal, opponents could argue that Tripadvisor is transformed into the "publisher" of customer reviews by virtue of Tripadvisor's methodology for organizing and presenting users' reviews—or, for example, because of its policies regarding penalizing companies that solicit or submit fake reviews. Although NTIA's precise proposal is quite opaque—largely because it is clearly drafted to address postings on large social media platforms, not review sites—the net effect could well be to expose Tripadvisor and other review sites to the possibility of ruinous defamation litigation. While we know that is not the intention, this proposal is another example of the types of collateral damage that could potentially come from amending Section 230 in the manner being discussed.

**Transparency.** Finally, we are concerned about NTIA's proposed "transparency" requirements.<sup>15</sup> As we noted above, Tripadvisor is deeply committed to transparency, and indeed is the first and to our knowledge only online review platform to have published a transparency report devoted to explaining our approach to fraud detection and content moderation. But the NTIA proposal would limit our ability to make exceptions as needed. For example, we have made commitments to traveler safety that have resulted in us making exceptions to our review guidelines to ensure that reviews that note significant safety issues appear on our platform despite other issues.<sup>16</sup> Equally worrisome, mandated transparency rules could easily become a roadmap for fraudsters interested in gaming the review system to increase their ratings or hackers seeking to exploit security, by demanding the information and evidence on which we rely when blocking, removing or penalizing fake reviews.

## Conclusion

Section 230 is the foundational law upon which a huge swath of internet businesses, including but also beyond social media, have been built. While we acknowledge that the industry and society must do better to improve on approaches to content moderation, this does not mean that Section 230 has failed, or that any changes to it—or regulatory interpretations of it—are necessary.

NTIA's petition focuses on a set of purported issues, which have received most of the political and media attention, with respect to large social media platforms. In focusing on

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<sup>14</sup> See NTIA Pet. at 42–46.

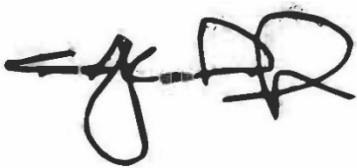
<sup>15</sup> See NTIA Pet. at 50–52.

<sup>16</sup> See *Tripadvisor's Commitment to Traveler Safety*: <https://www.tripadvisor.com/blog/tripadvisors-commitment-to-traveler-safety-us/>.

those high-profile concerns, however, the petition ignores the fact that large social media platforms are in number an extremely small subset of the stakeholders that rely on Section 230 to operate.

As the Tripadvisor experience detailed here demonstrates, there exists a diversity of platforms, products, and moderation approaches in the internet industry. And Section 230 as currently interpreted by the courts provides the flexibility necessary to account for companies' different product offerings, business models, and approaches to content. We urge the Commission to reject the petition lest it throw out the baby with the bathwater.

Sincerely,

A handwritten signature in black ink, appearing to read 'Seth Kalvert', with a stylized flourish at the end.

Seth Kalvert  
Senior Vice President and General Counsel  
Tripadvisor