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Introduction to 47 USC 230

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The Statute

- Statute enacted in 1996 at height of cyberspace exceptionalism
- 47 USC 230(c)(1): “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”
 - In English: except for statutory exclusions, websites aren’t liable for third party content...*PERIOD*
- 47 USC 230(c)(2): “No provider or user of an interactive computer service shall be held liable on account of any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be...objectionable”
 - In English: websites aren’t liable for editorial decisions to block content

What Does 47 USC 230 Mean?

- A website isn't liable for publishing a defamatory consumer post about your business
- Google isn't liable for de-indexing your site
- Many fears about UGC functionality are unfounded
- A website generally isn't liable for content it links to
- 47 USC 230 may reduce the need for indemnities

Debunking Common Myths

- **Myth: Websites must be “passive conduits” to avoid liability for user content**
 - e.g. the immunity is lost if website...
 - ...reviews/pre-screens user content and chooses to publish it
 - ...edits user content
 - ...gets notice of problematic third party content and doesn't remove it
 - ...or promises to remove that content and doesn't

Lesson: 230 trumps the passive conduit vs. editor paradigm

- Websites can adjust their editorial “dial” without liability consequences

- **Myth: Websites lose the immunity if they...**
 - ...own or have an exclusive license to third party content
 - ...make money from third party content
 - ...redistribute third party content to other sites
 - ...facilitate the third party's bad actions

Immunity Limits

- International operations
- ECPA
- Federal crimes
 - Ex: obscenity, child porn, gambling, fraud
- Intellectual property
 - Copyright—17 USC 512 applies
 - Federal trademark—“printer/publisher” remedy limit (15 USC 1114(2))
 - Ninth Circuit: state IP claims are immunized
 - Includes trade secrets, publicity rights, state trademark, state copyright
- Website co-develops content/judicial discomfort
- Website marketing representations