

Santa Clara University

Online Account Termination and 47 USC 230(c)(2)

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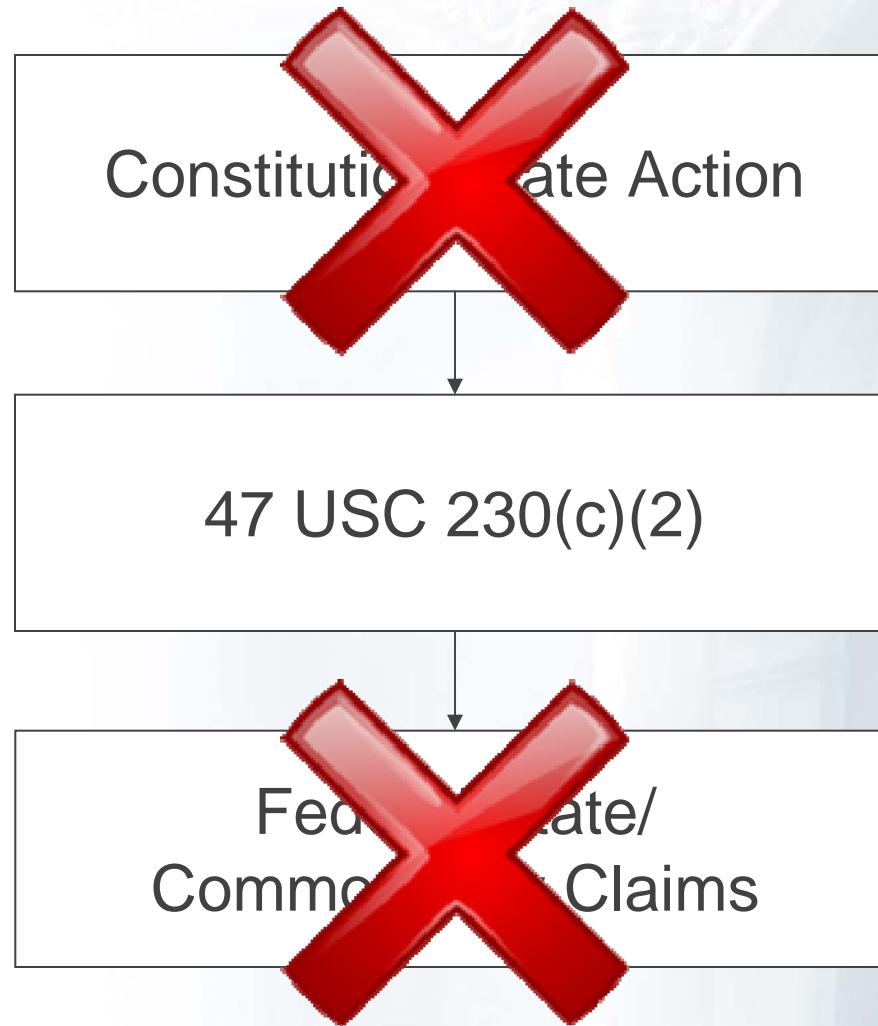
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47 USC 230(c)(2)

- “No provider or user of an interactive computer service shall be held liable on account of (A) 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”
- Elements
 - Provider/user of ICS
 - Voluntary good faith action
 - Restrict “obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable” material
- Exclusions
 - Federal criminal prosecutions
 - IP claims
 - ECPA/state law equivalents

Doctrinal Hierarchy



230(c)(2) Workarounds

- IP claims
- “Good faith”
 - Possible exclusions: antitrust/anti-competition
 - Otherwise, subjective standard
- “Otherwise objectionable”
 - Ejusdem generis or general catchall?
- False Advertising / Breach of Contract / Promissory Estoppel
 - Advertising claims
 - 230 might apply nonetheless
 - Heightened pleading requirements
 - Contract claims
 - Termination for convenience clauses and other disclaimers
 - TPB workarounds fail
 - Promissory estoppel
 - Artifact of past practices?

Implications

- Net: 47 USC 230(c)(2) preempts most lawsuits over online account termination
- This is a good outcome!
 - Communities need management
 - Users often want provider protection
 - Provider decisions shouldn't be clouded by meritless legal claims
 - Capricious terminations feed into market forces
 - Existing users can reduce activity or leave
 - Prospective users are influenced by provider reputation