

47 U.S.C. §230 Overview

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47 USC §230(c)(1)

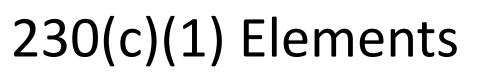
"No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider"

=> websites/mobile apps aren't liable for third party content/actions

230(c)(1) Elements



- "Provider or user of an interactive computer service"
 - ICS = "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions"
- "Treated as a publisher or speaker"
 - Excludes federal crimes, [federal] IP laws and ECPA
- "Provided by another information content provider"
 - ICP = "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service"
- Roommates.com: "If you don't encourage illegal content, or design your website to require users to input illegal content, you will be immune"





Irrelevant to Section 230:

- Editorial control
 - No distinction between active/passive
 - Protects all curation decisions. Ex: Zeran v. AOL:
 "deciding whether to publish, withdraw, postpone or alter content"
- Notice

Complementary Statutes



- SPEECH Act (28 U.S.C. §§ 4101-05)
- Anti-SLAPP Laws
- Cal. Civil Code §1670.8

Getting Around Section 230



- Not ICS [**5**]
- Distributor liability [**š**]
- Liability for moderators/super-users [& &]
- Promissory estoppel [§ §]
- Partial responsibility for content development [§ §]
- Claim over site text/marketing [6 6 6]
- Failure to warn [???]
- [Federal] IP claim [& & & &]



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"

© Safe Harbor Compared



	47 U.S.C. §230	17 U.S.C. §512(c)
Who	ICS provider/user	Online service provider
Claims covered	Everything but [federal] IP, federal criminal prosecutions, ECPA	Copyright
Duty upon notice	None	Expeditious take down
Effect of Scienter	None	No safe harbor
Prerequisites	None	Registration + other formalities

Fields v. Twitter



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                                  UNITED STATES DISTRICT COURT
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                                NORTHERN DISTRICT OF CALIFORNIA
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       TAMARA FIELDS, on behalf of herself, as a
                                                      Case No.
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       representative of the ESTATE OF LLOYD
                                                      COMPLAINT
       FIELDS, JR.,
15
                                                       JURY TRIAL DEMANDED
                                        Plaintiff,
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18
       TWITTER, INC.,
19
                                       Defendants.
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Lloyd "Carl" Fields, Jr.

http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=2136&context=historical

Fields v. Twitter



- Black letter law: Twitter isn't liable for third party content or actions
- Workaround: Twitter "materially contributes to terrorist organization"
 - Ex: Klayman v. Zuckerberg
 - Ex: Doe v. MySpace
 - Bonus: 230(c)(2) protects Twitter's filtering decisions
- Workaround: civil claim based on federal crime
 - Ex: Doe v. Bates, Obado v. Magedson, MA v. Village Voice, Dart v. Craigslist, GoDaddy v. Toups, Hinton v. Amazon
- Workaround: Twitter "encourages illegal content"
- Non-Section 230 jurisprudence
 - Causation
 - Vesely v. Armslist
 - First Amendment. Ex: Zhang v. Baidu, Google v. Hood