



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”



230(c)(1) Elements

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 [💰]
- Distributor liability [💰]
- Liability for moderators/super-users [💰 💰]
- Promissory estoppel [💰 💰]
- Partial responsibility for content development [💰 💰]
- Claim over site text/marketing [💰 💰 💰]
- Failure to warn [???]
- Encourage illegal content/design site to require input of illegal content [💰 💰 💰 💰]
- [Federal] IP claim [💰 💰 💰 💰]
- Federal prosecution for crime/conspiracy [🔒 🔒 🔒 🔒]

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 Scierter	None	No safe harbor
Prerequisites	None	Registration + other formalities

Fields v. Twitter



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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

14 TAMARA FIELDS, on behalf of herself, as a
15 representative of the ESTATE OF LLOYD
16 FIELDS, JR.,

16 Plaintiff,

17 v.

18 TWITTER, INC.,

19 Defendants.

Case No.

COMPLAINT

JURY TRIAL DEMANDED



Lloyd "Carl" Fields, Jr.

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