

Santa Clara University

Internet Immunity As Economic Policy

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I ♥ §230!

Section 230

“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

Section 230 vs. Copyright Notice-&-Takedown

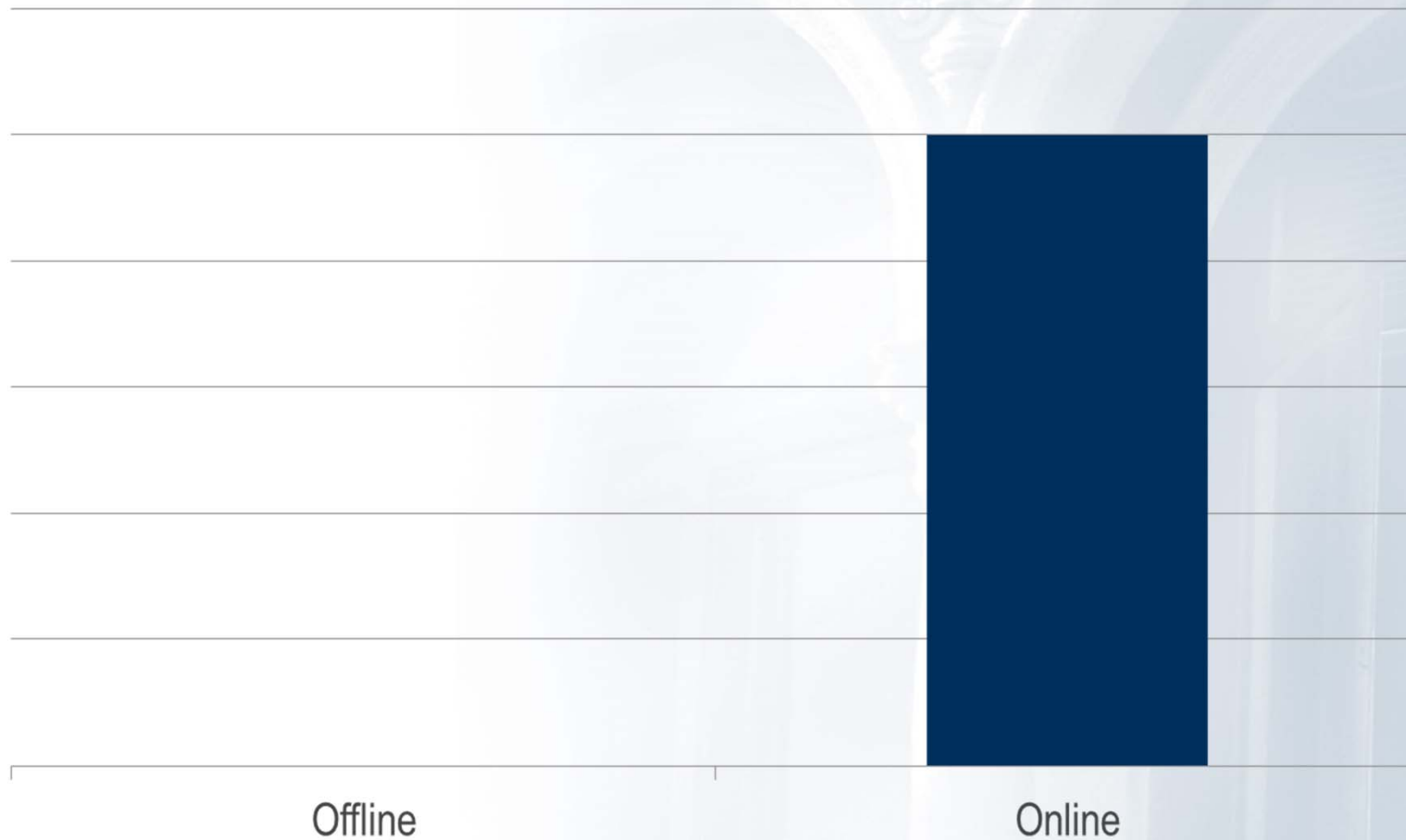
	47 U.S.C. §230	17 U.S.C. §512(c)
Who	ICS provider/user	Online service provider
Claims covered	Any claim based on 3rd party content except [federal] IP, federal criminal prosecutions, ECPA	Copyright
Duty upon notice	None	Expeditious takedown
Effect of Scierter	None	No safe harbor
Deanonymization Requirements	None	Mandatory subpoena
Prerequisites	None	Registration + other formalities

Outline

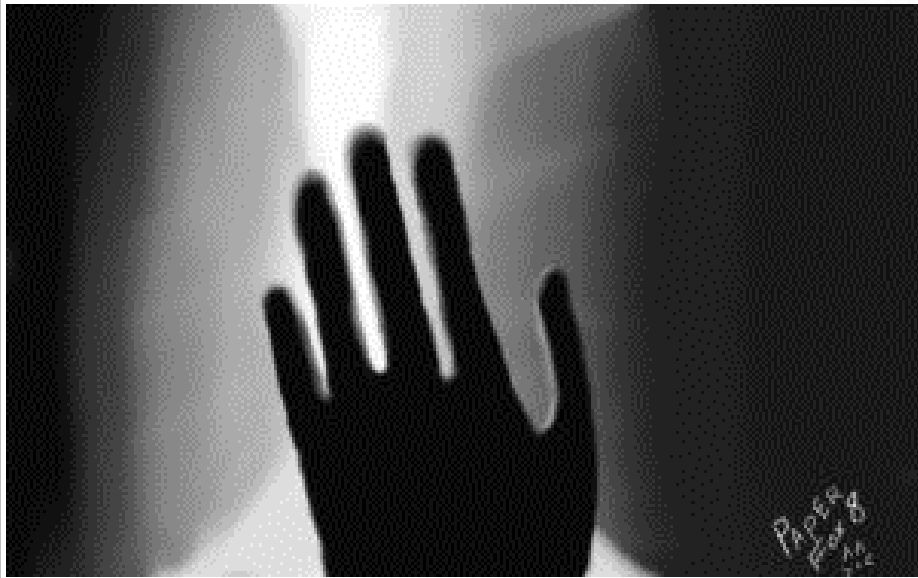
- Consumer Reviews Prove Internet Exceptionalism
- Consumer Reviews Improve Marketplace Efficiency
- Section 230 Enables Consumer Reviews
- Section 230 Creates Transborder Competitive Advantage

Consumer Reviews & Internet Exceptionalism

Consumer Reviews



Consumer Reviews & Marketplace Efficiency

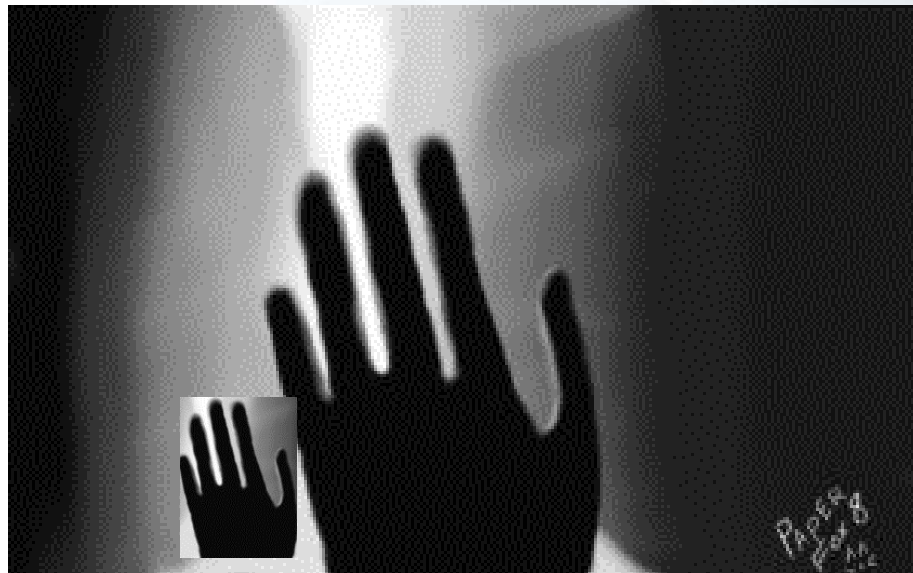


- 92% read online reviews for local businesses
- Only 13% will consider a business with a 1- or 2-star rating
- 80% trust online reviews as much as personal recommendations

Source: <http://searchengineland.com/87-percent-customers-wont-consider-low-ratings-228607>

Section 230 & Consumer Reviews

- Section 230 protects negative truthful information
 - Publishers can't verify reviews
 - Liability creates lopsided databases
- Section 230 promotes competition among review websites
 - Enables review site experimentation and differentiation
 - “The invisible hand of the invisible hand”



Section 230 & Transborder Competition

- Section 230 is globally unique policy
- Section 230 strengthens efficiency of domestic market
- Improved marketplace efficiency leads to greater comparative GDP performance
- Section 230 doesn't just protect "free speech," it increases social wealth

Improving Section 230's Performance

- Trend: more voluntary authentication/verification
- Policy changes
 - Plug the IP “hole”
 - Consumer Review Freedom Act
 - Federal anti-SLAPP law
 - Threats action?
 - Extend Section 230 offline?

Additional Reading

- The Regulation of Reputational Information, <http://ssrn.com/abstract=1754628>
- Online Word of Mouth and its Implications for Trademark Law, <http://ssrn.com/abstract=1020695>
- The Implications of Excluding State Crimes from 47 U.S.C. § 230's Immunity, <http://ssrn.com/abstract=2287622>