

Santa Clara University

Section 230:

**THE GOOD,
THE BAD
AND THE UGLY**

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The Internet and the “Wild West”



19-cv-06943-RA Document 29 Filed 08/20/20 Page 1 of 20

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHARLES GANSKE,

Plaintiff,

v.

LOUISE DAPHNE MENSCH,

Defendant.

No. 19-CV-6943 (RA)

OPINION & ORDER

RONNIE ABRAMS, United States District Judge:

If the Internet is akin to the Wild West, as many have suggested, Twitter is, perhaps, the shooting gallery, where verbal gunslingers engage in prolonged hyperbolic crossfire. It is in this context of battle by tweet that the conduct at issue in this defamation case was born. Plaintiff

Section 230(c)(1)'s 26 Words

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.



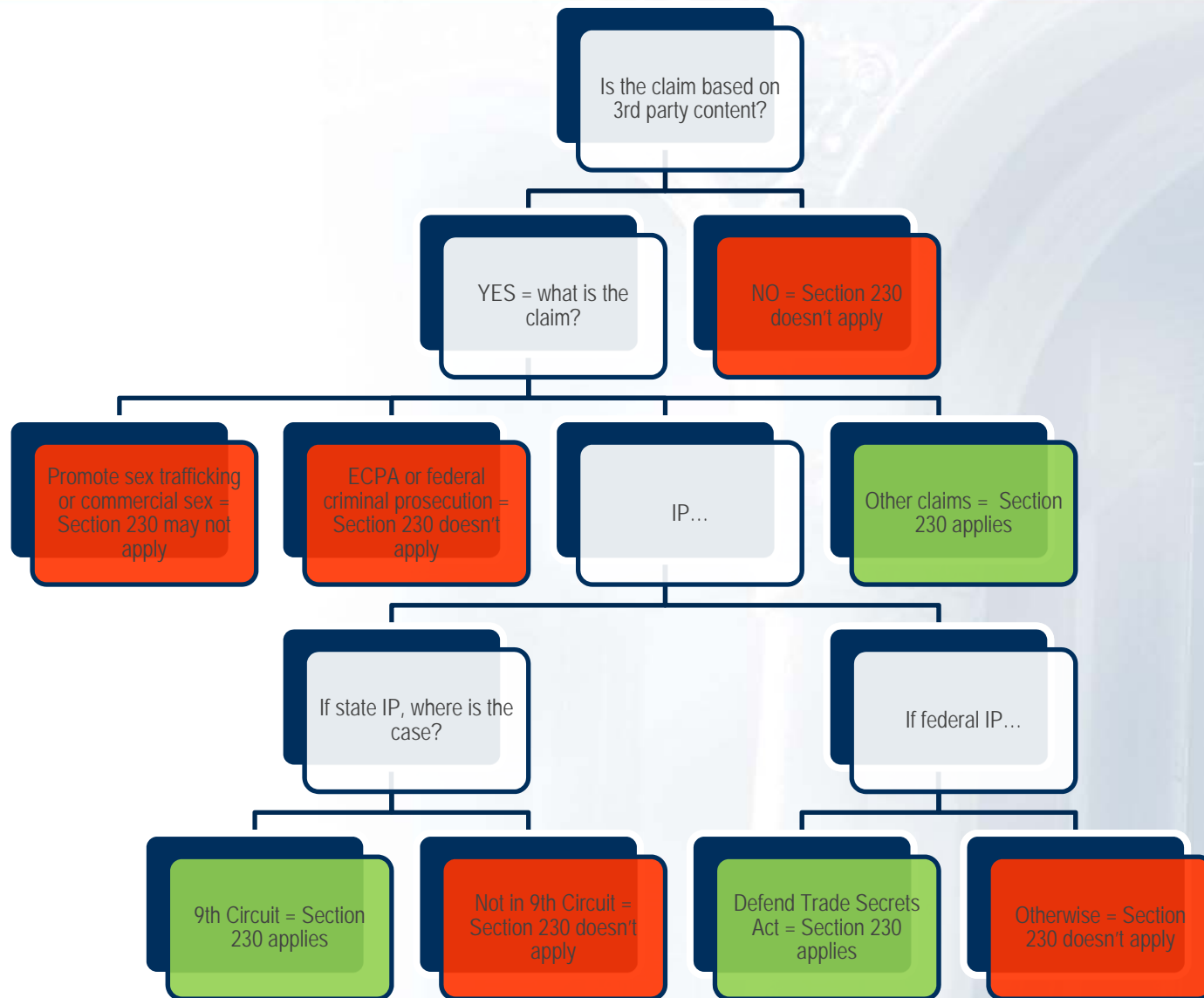
https://www.zazzle.com/section_230_long_sleeve_t_shirt-235051749567911980



26 Words, Simplified

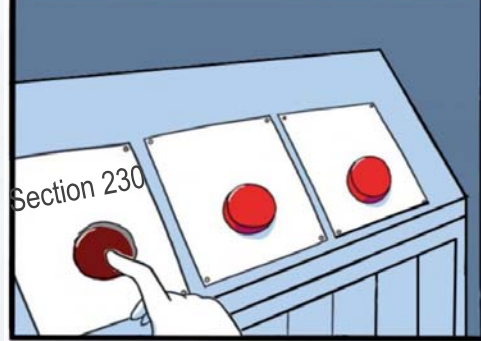
Websites aren't
liable for third-
party content*

26 Words Flowcharted















THE GOOD

(the rise of Web
2.0)



Santa Clara University

Most visited US websites (Wikipedia), Feb. 2023

Google Search	google.com	1 (→)	Computers Electronics and Technology > Search Engines	 United States
YouTube	youtube.com	2 (→)	Arts & Entertainment > Streaming & Online TV	 United States
Facebook	facebook.com	3 (→)	Computers Electronics and Technology > Social Media Networks	 United States
Twitter	twitter.com	4 (→)	Computers Electronics and Technology > Social Media Networks	 United States
Instagram	instagram.com	5 (→)	Computers Electronics and Technology > Social Media Networks	 United States
Wikipedia	wikipedia.org	7 (▲1)	Reference Materials > Dictionaries and Encyclopedias	 United States
Yahoo	yahoo.com	9 (→)	News & Media Publishers	 United States
Whatsapp	whatsapp.com	10 (▲1)	Computers Electronics and Technology > Social Media Networks	 United States
Amazon	amazon.com	13 (→)	eCommerce & Shopping > Marketplace	 United States
Live	live.com	15 (→)	Computers Electronics and Technology > Email	 United States
LinkedIn	linkedin.com	19 (▲2)	Computers Electronics and Technology > Social Media Networks	 United States
Reddit	reddit.com	20 (▲1)	Computers Electronics and Technology > Social Media Networks	 United States

How Does Section 230 Benefit Us?

- Social Media
- Online Marketplaces
- Consumer Reviews
- Wikis
- A lifeline during the pandemic
- Jobs and global economic advantages

How Does Section 230 Benefit Us?

The New York Times

Media | Meta Accused of Hooking Kids | Montana's TikTok Ban | New York Targets Algorithms | T

• TheUpshot

For One Group of Teenagers, Social Media Seems a Clear Net Benefit

Despite the surgeon general's warning about its risks for youth in general, researchers and teenagers say it can be a "lifeline" for L.G.B.T.Q. youth.

How Does Section 230 Benefit Us?

We are ders



Group by The ROS1ders

ROS1 Positive (ROS1+) Cancer



+ Invite



Discussion

Featured

Rooms

Members

Events

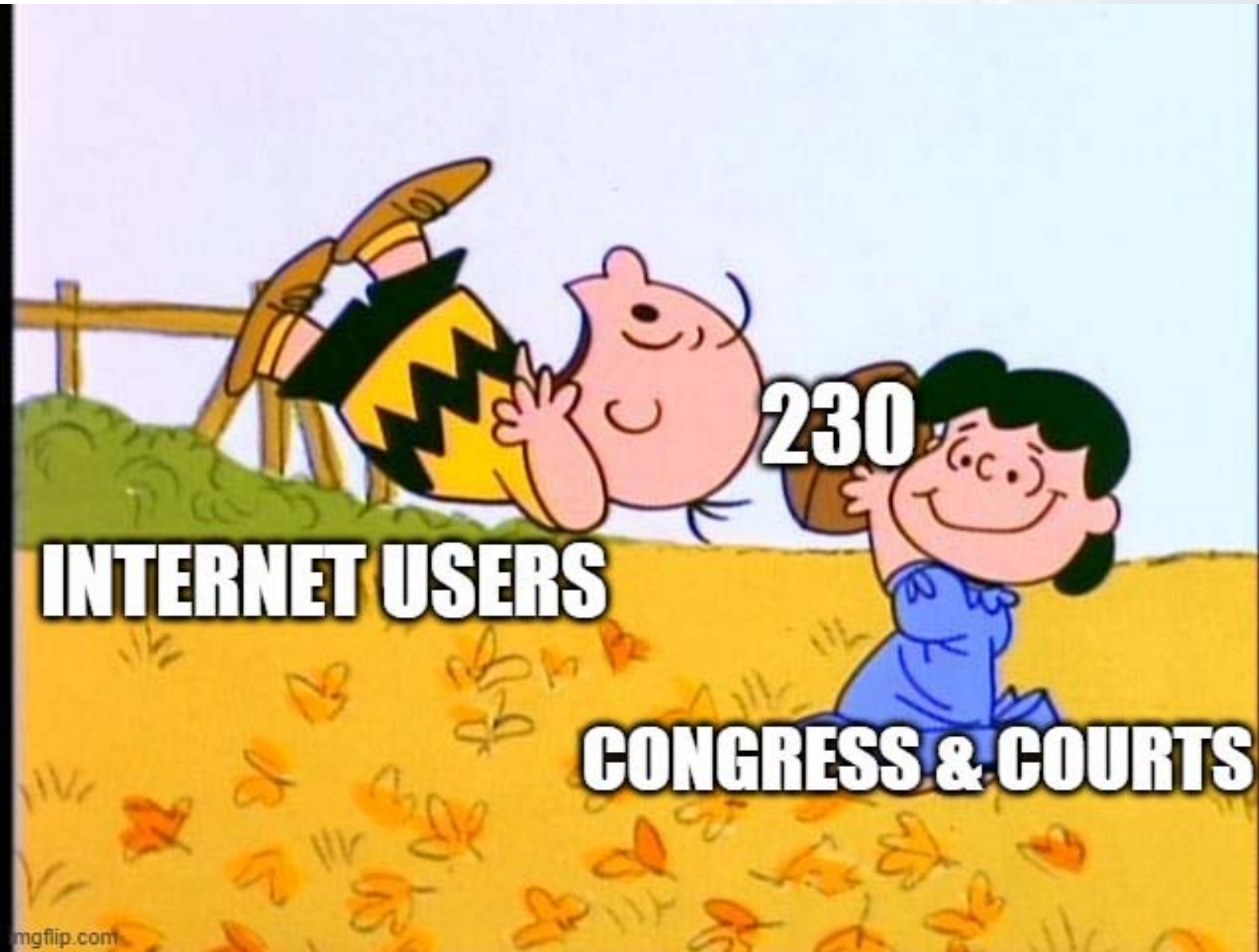
Media

Files



THE BAD

(the demise of Section
230 & Web 2.0)



INTERNET USERS

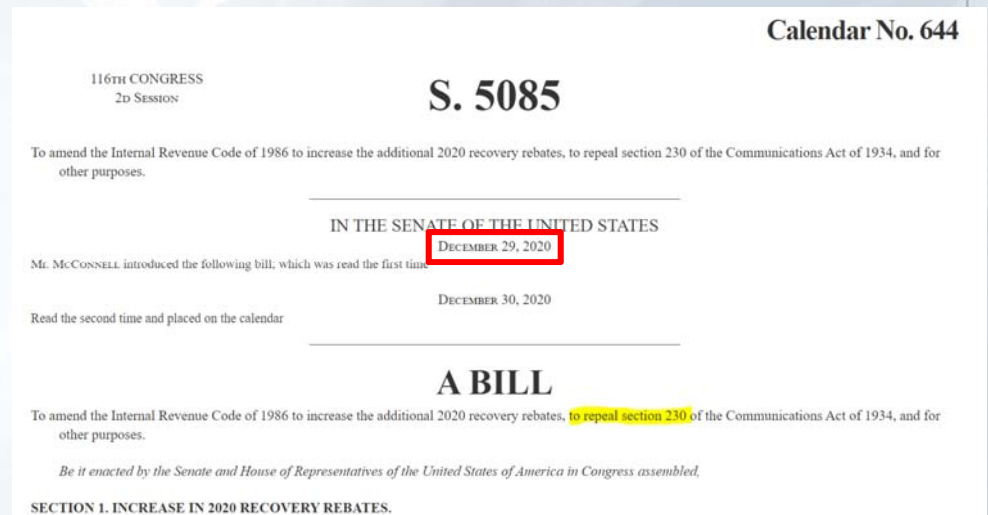
230

CONGRESS & COURTS



Who's Coming for Section 230?

- Courts
 - Lemmon v. Snap
 - In re Social Media Cases
- Executive Branch
- Congress
- State legislatures



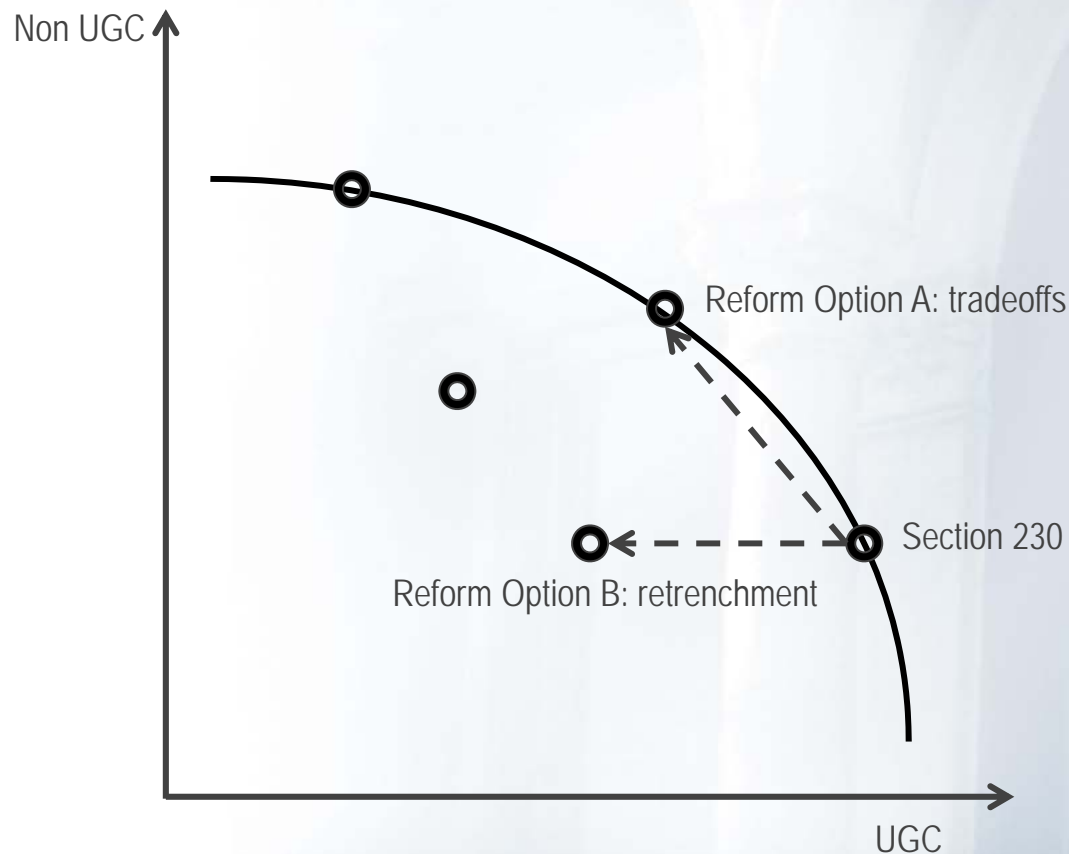
Splinternets

- EU Digital Services Act (DSA) = treating publishers like gas stations
- UK Online Safety Act = mandatory age authentication + services must take action against lawful-but-awful content

New obligations	Intermediary services (cumulative obligations)	Hosting services (cumulative obligations)	Online platforms (cumulative obligations)	Very large platforms (cumulative obligations)
Transparency reporting	•	•	•	•
Requirements on terms of service due account of fundamental rights	•	•	•	•
Cooperation with national authorities following orders	•	•	•	•
Points of contact and, where necessary, legal representative	•	•	•	•
Notice and action and obligation to provide information to users		•	•	•
Reporting criminal offences		•	•	•
Complaint and redress mechanism and out of court dispute settlement			•	•
Trusted flaggers			•	•
Measures against abusive notices and counter-notices			•	•
Special obligations for marketplaces, e.g. vetting credentials of third party suppliers ("KYBC"), compliance by design, random checks			•	•
Bans on targeted adverts to children and those based on special characteristics of users			•	•
Transparency of recommender systems			•	•
User-facing transparency of online advertising			•	•
Risk management obligations and crisis response				•
External & Independent auditing, internal compliance function and public accountability				•
User choice not to have recommendations based on profiling				•
Data sharing with authorities and researchers				•
Codes of conduct				•
Crisis response cooperation				•

Section 230 as a Pareto-Efficient Solution

Pareto-efficient = “no further improvements to society's well being can be made through a reallocation of resources that makes at least one person better off without making someone else worse off”





230 CRITICISM

**REGULATORS
(AND MEDIA)**

**COMMUNITIES
THAT
RELY ON 230**

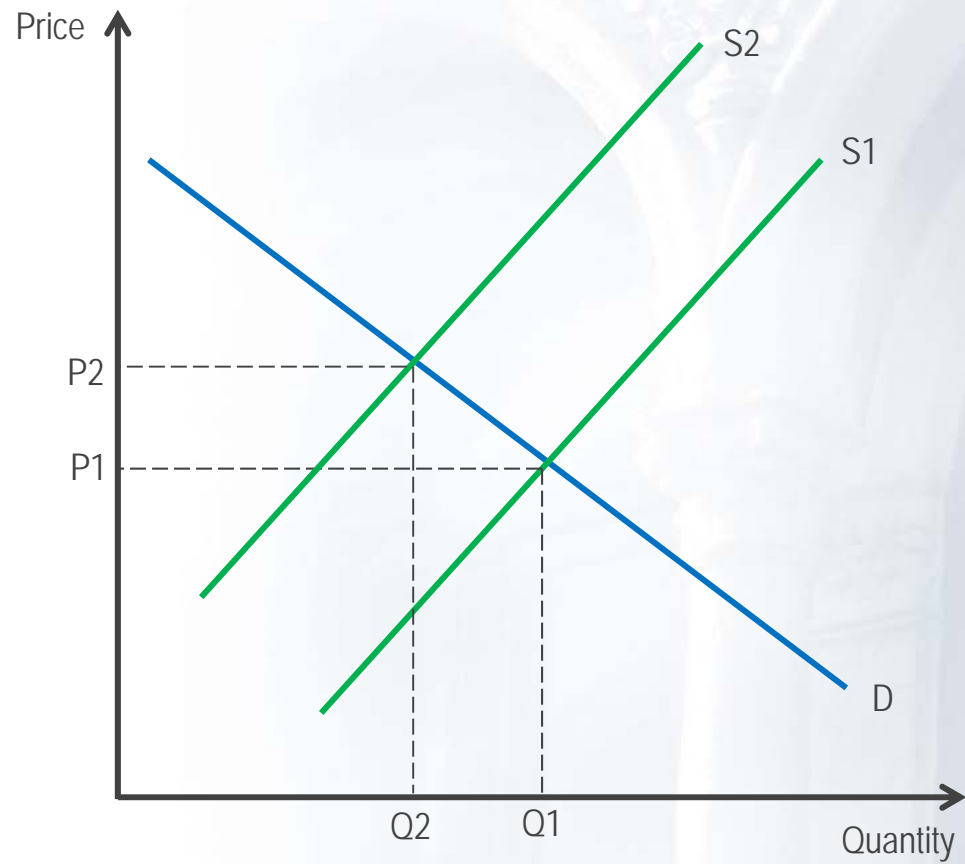
THE UGLY

(a post-230
world)





Supply Curve Shifts to the Left







UGC



Professionally
produced content