Section 230:

**The Good, The Bad and The Ugly**

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The Internet and the "Wild West"

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
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 aren’t liable for third-party content*
Is the claim based on 3rd party content?

- **YES** = what is the claim?
  - Promote sex trafficking or commercial sex = Section 230 may not apply
  - ECPA or federal criminal prosecution = Section 230 doesn’t apply

- **NO** = Section 230 doesn’t apply
  - IP...
  - Other claims = Section 230 applies

If state IP, where is the case?

- 9th Circuit = Section 230 applies
- Not in 9th Circuit = Section 230 doesn’t apply

If federal IP...

- Defend Trade Secrets Act = Section 230 applies
- Otherwise = Section 230 doesn’t apply
THE GOOD

(the rise of Web 2.0)
THE MODERATOR'S DILEMMA

let the trolls & spammers win
mistake-free content moderation

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Section 230

THE MODERATOR'S DILEMMA
## Most visited US websites (Wikipedia), Feb. 2023

<table>
<thead>
<tr>
<th>Website</th>
<th>Domain</th>
<th>Rank</th>
<th>Category</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Google Search</td>
<td>google.com</td>
<td>1 (--)</td>
<td>Computers Electronics and Technology &gt; Search Engines</td>
<td>United States</td>
</tr>
<tr>
<td>YouTube</td>
<td>youtube.com</td>
<td>2 (--)</td>
<td>Arts &amp; Entertainment &gt; Streaming &amp; Online TV</td>
<td>United States</td>
</tr>
<tr>
<td>Facebook</td>
<td>facebook.com</td>
<td>3 (--)</td>
<td>Computers Electronics and Technology &gt; Social Media Networks</td>
<td>United States</td>
</tr>
<tr>
<td>Twitter</td>
<td>twitter.com</td>
<td>4 (--)</td>
<td>Computers Electronics and Technology &gt; Social Media Networks</td>
<td>United States</td>
</tr>
<tr>
<td>Instagram</td>
<td>instagram.com</td>
<td>5 (--)</td>
<td>Computers Electronics and Technology &gt; Social Media Networks</td>
<td>United States</td>
</tr>
<tr>
<td>Wikipedia</td>
<td>wikipedia.org</td>
<td>7 (▲1)</td>
<td>Reference Materials &gt; Dictionaries and Encyclopedias</td>
<td>United States</td>
</tr>
<tr>
<td>Yahoo</td>
<td>yahoo.com</td>
<td>9 (--)</td>
<td>News &amp; Media Publishers</td>
<td>United States</td>
</tr>
<tr>
<td>Whatsapp</td>
<td>whatsepp.com</td>
<td>10 (▲1)</td>
<td>Computers Electronics and Technology &gt; Social Media Networks</td>
<td>United States</td>
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<tr>
<td>Amazon</td>
<td>amazon.com</td>
<td>13 (--)</td>
<td>eCommerce &amp; Shopping &gt; Marketplace</td>
<td>United States</td>
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<tr>
<td>Live</td>
<td>live.com</td>
<td>15 (--)</td>
<td>Computers Electronics and Technology &gt; Email</td>
<td>United States</td>
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<tr>
<td>LinkedIn</td>
<td>linkedin.com</td>
<td>19 (▲2)</td>
<td>Computers Electronics and Technology &gt; Social Media Networks</td>
<td>United States</td>
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<tr>
<td>Reddit</td>
<td>reddit.com</td>
<td>20 (▲1)</td>
<td>Computers Electronics and Technology &gt; Social Media Networks</td>
<td>United States</td>
</tr>
</tbody>
</table>
How Does Section 230 Benefit Us?

- Social Media
- Online Marketplaces
- Consumer Reviews
- Wikis
- A lifeline during the pandemic
- Jobs and global economic advantages
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?
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**
- **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
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”
THE UGLY
(a post-230 world)
Supply Curve Shifts to the Left

- Quantity: Q1, Q2
- Price: P1, P2
- Supply Curves: S1, S2
- Demand: D

Graph shows a shift in the supply curve from S1 to S2, resulting in a decrease in quantity from Q1 to Q2 and an increase in price from P1 to P2.
UGC

Professionally produced content